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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2011–0186; Amendment Nos. 121–362]

RIN 2120–AK14

Lavatory Oxygen Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adds termination criteria and an expiration date to Special Federal Aviation Regulation 111, which temporarily authorizes variances from existing standards related to the provisioning of supplemental oxygen inside lavatories. This action is necessitated by the publication of Airworthiness Directive 2012–11–09, which mandates actions that restore supplemental oxygen to lavatories.

DATES: This final rule is effective March 29, 2013.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: (425) 227–2136; email: *jeff.gardlin@faa.gov.*

For legal questions concerning this action, contact Douglas Anderson, Federal Aviation Administration, Office of the Regional Counsel, ANM–7, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: (425) 227–2166; email: *douglas.anderson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause

The FAA finds that notice and public comment to this final rule are unnecessary, since this amendment is a conforming change in light of the rulemaking activity that led to AD 2012–11–09.[1] Interested parties have been offered an opportunity to comment on the issues covered by this SFAR, and the FAA has considered all comments. *See* Airworthiness Directive (AD) 2012–11–09; 77 FR 38000, June 26, 2012.

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General Requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it revises the safety standards for design and operation of transport category airplanes.

I. Overview of Final Rule

The FAA issued Special Federal Aviation Regulation (SFAR) 111 to address the noncompliance with the regulations created by compliance with AD 2011–04–09.[2] Because no solution was available at that time that would both comply with the AD and provide oxygen to occupants of lavatories, the SFAR was intended to be in effect until superseded by further action.

As discussed in the preambles to the notice of proposed rulemaking (NPRM)[3] and final rule adopting AD 2012–11–09, the FAA chartered an Aviation Rulemaking Committee (ARC) to identify methods of restoring oxygen in lavatories without creating security vulnerabilities. The FAA is in the process of developing rulemaking to adopt new standards for chemical oxygen generator system installations, based on the ARC recommendations, and has issued Policy Statement PS–ANM–25–04, *Chemical Oxygen Generator Installations.* Applicants may use the guidance in that policy statement for approval of chemical oxygen generator systems. Further, the FAA has issued AD 2012–11–09, which mandates installation of a supplemental oxygen system in all airplanes affected by AD 2011–04–09.

The FAA is now establishing an expiration date for SFAR 111 that coincides with the compliance date of AD 2012–11–09. While we fully expect that the compliance time specified in the AD is sufficient to enable all affected operators to comply within that time, it is possible there will be circumstances beyond an operator's control under which the operator's compliance will be delayed. If the delay is adequately justified, per § 39.19, the FAA may approve an alternative method of compliance (AMOC) or extension of compliance time. To avoid having to initiate additional rulemaking or to grant a separate exemption from the regulations referenced in SFAR 111, paragraph (e) would allow for an extension of the expiration of the SFAR corresponding to the duration of any such extension of compliance time.

Provisions of SFAR 111

The applicability of the SFAR has been amended to conform to AD 2012–11–09. The amended SFAR applies to persons required to comply with AD 2012–11–09, but only for airplanes on which the actions required by the AD have not yet been accomplished. The effect of this limitation is that, once those actions are accomplished on an airplane, it is no longer eligible for the relief or subject to the requirements provided by this SFAR, and the operator

[1] AD 2012–11–09, Airworthiness Directives; Various Transport Category Airplanes (Docket No. FAA–2012–0102), 77 FR 38000, June 26, 2012.

[2] AD 2011–04–09, Airworthiness Directives; Various Transport Category Airplanes Equipped with Chemical Oxygen Generators Installed in a Lavatory (Docket No. FAA–2011–0157). 76 FR 12556, March 8, 2011.

[3] 77 FR 11418, February 27, 2012.

is again required to comply with the applicable rules specified in paragraph (b) of the SFAR.

Until compliance with AD 2012–11–09 is accomplished, the amended SFAR allows all air carriers that were required to comply with AD 2011–04–09 to continue to operate without complying with specific regulations pertaining to supplemental oxygen systems. The amended SFAR also permits manufacturers and modifiers of transport category airplanes to deliver or return to service airplanes affected by the FAA directive with the same relief. In addition, the amended SFAR requires certain procedural and configuration enhancements to reduce the safety risk to passengers in the unlikely event that they should need oxygen while in a lavatory. Paragraph (c) of the amended SFAR requires that when a person described in paragraph (a) of this section has modified airplanes as required by Airworthiness Directive 2011–04–09, the affected airplanes must be returned to service with a note in the airplane maintenance records that the modification was done under the provisions of this SFAR.

Paragraph (h) of AD 2011–04–09 also contains a provision for regulatory relief that is in effect until superseded by other rulemaking. AD 2012–11–09 superseded AD 2011–04–09 and contains a similar provision for superseding future rulemaking to allow for the progressive retrofit of the affected fleet. As such, the amended SFAR is only needed to allow for deliveries, modifications and other entries into service that might otherwise not be allowed due to noncompliance with supplemental oxygen requirements, until the compliance date of AD 2012–11–09.

II. Background

On March 8, 2011, the FAA published an interim final rule, request for comments (Amendment Nos. 21–94, 25–133, 121–354, 129–50; SFAR 111), on security considerations for lavatory oxygen systems in the **Federal Register** (76 FR 12550). The FAA had become aware of security vulnerability with certain types of oxygen systems installed inside the lavatories of most transport category airplanes. As a result, the FAA mandated that these oxygen systems be rendered inoperative until the vulnerability could be eliminated. However, by rendering the oxygen systems inoperative to comply with that mandatory action, operators were out of compliance with the requirements of Title 14, Code of Federal Regulations (14 CFR) 25.1447, 121.329, and 121.333.

In addition to the fleet of in-service airplanes, newly manufactured airplanes and airplanes undergoing other modification also needed to render the oxygen systems in the lavatories inoperative. SFAR 111 was needed so the affected airplanes could continue operating until the issue was resolved.

The FAA then chartered an Aviation Rulemaking Committee (ARC) to make recommendations regarding new standards for the oxygen system installation, as well as how to implement those standards. The ARC submitted its recommendations to the FAA, and the FAA intends to use those recommendations as the basis for new standards and new installation approvals.

III. Discussion of Public Comments and Final Rule

The FAA received comments from ten commenters regarding SFAR 111. Those commenters were: Aerox Aviation Oxygen Systems, Inc., The Boeing Company, and eight individual commenters. The FAA's disposition of those comments was published in the **Federal Register** on February 27, 2012 (77 FR 11385.) The FAA determined that no revisions to SFAR 111 were necessary based off comments received.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires 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 $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This final rule adds an expiration date to SFAR 111 that coincides with the compliance date for AD 2012–11–09.

The FAA has, therefore, determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The costs to small airline operators to install lavatory oxygen generating

systems have been addressed in the economic analysis associated with the rulemaking for AD–2012–11–09. This final rule ensures that the expiration date of SFAR 111 will coincide with the compliance date of AD–2012–11–09, but also allows for an extension of compliance time if the delay is adequately justified.

Therefore as the FAA Acting Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it responds to a domestic safety objective and is not considered an unnecessary obstacle to international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document my be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov);*
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/or*
3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration

amends chapter I of Title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

Subpart DD—Special Federal Aviation Regulations

■ 2. Revise § 121.1500 to read as follows:

§ 121.1500 SFAR No. 111—Lavatory Oxygen Systems.

(a) *Applicability.* This SFAR applies to the following persons:

(1) All operators of transport category airplanes that are required to comply with AD 2012–11–09, but only for airplanes on which the actions required by that AD have not been accomplished.

(2) Applicants for airworthiness certificates.

(3) Holders of production certificates.

(4) Applicants for type certificates, including changes to type certificates.

(b) *Regulatory relief.* Except as noted in paragraph (d) of this section and contrary provisions of 14 CFR part 21, and 14 CFR 25.1447, 119.51, 121.329, 121.333 and 129.13, notwithstanding, for the duration of this SFAR:

(1) A person described in paragraph (a) of this section may conduct flight operations and add airplanes to operations specifications with disabled lavatory oxygen systems, modified in accordance with FAA Airworthiness Directive 2011–04–09, subject to the following limitations:

(i) This relief is limited to regulatory compliance of lavatory oxygen systems.

(ii) Within 30 days of March 29, 2013, all oxygen masks must be removed from affected lavatories, and the mask stowage location must be reclosed.

(iii) Within 60 days of March 29, 2013 each affected operator must verify that crew emergency procedures specifically include a visual check of the lavatory as a priority when checking the cabin following any event where oxygen masks were deployed in the cabin.

(2) An applicant for an airworthiness certificate may obtain an airworthiness certificate for airplanes to be operated by a person described in paragraph (a) of this section, although the airplane lavatory oxygen system is disabled.

(3) A holder of a production certificate may apply for an airworthiness certificate or approval for airplanes to be operated by a person described in paragraph (a) of this section.

(4) An applicant for a type certificate or change to a type certificate may obtain a design approval without showing compliance with § 25.1447(c)(1) of this chapter for lavatory oxygen systems, in accordance with this SFAR.

(5) Each person covered by paragraph (a) of this section may inform passengers that the lavatories are not equipped with supplemental oxygen.

(c) *Return to service documentation.* When a person described in paragraph (a) of this section has modified airplanes as required by Airworthiness Directive 2011–04–09, the affected airplanes must be returned to service with a note in the airplane maintenance records that the modification was done under the provisions of this SFAR.

(d) *Expiration.* This SFAR expires on September 10, 2015, except this SFAR will continue to apply to any airplane for which the FAA approves an extension of the AD compliance time for the duration of the extension.

Issued in Washington, DC, on January 18, 2013.

Michael P. Huerta,

Administrator.

[FR Doc. 2013–01695 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1293; Directorate Identifier 2012–NE–45–AD; Amendment 39–17327; AD 2013–02–06]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Engine Alliance GP7270 and GP7277 turbofan engines. This AD requires initial and repetitive borescope inspections and removal from service before further flight if one or more burn holes are detected, in certain high-pressure turbine (HPT) stage 2 nozzles. This AD also requires mandatory removal from service of these HPT stage 2 nozzles at the next engine shop visit. This AD was prompted by a report received of inadequate cooling of the HPT stage 2 nozzle, leading to damage to the HPT stage 2 nozzle, burn-through of the turbine case, and engine shutdown. We are issuing this AD to prevent HPT stage 2 nozzle failure, leading to uncontrolled fire, engine shutdown, and damage to the airplane.

DATES: This AD is effective February 12, 2013.

We must receive comments on this AD by March 14, 2013.

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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; 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 AD, the regulatory evaluation, any comments received, and other information. The street 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: Martin Adler, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7157; fax: 781–238–7199; email: *martin.adler@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We received a report of an engine shutdown and turbine case burn-through, preceded by exceedance of the engine exhaust gas temperature (EGT) limit and loss of engine oil. Investigation revealed that the event was caused by damage to the HPT stage 2 nozzle due to inadequate part cooling. HPT stage 2 nozzles, part numbers (P/Ns) 2101M24G01, 2101M24G02, and 2101M24G03, are identified as having

the inadequate cooling design. This condition, if not corrected, could result in HPT stage 2 nozzle failure, leading to uncontrolled fire, engine shutdown, and damage to the airplane.

FAA's Determination

We are issuing 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.

AD Requirements

This AD requires initial and repetitive borescope inspections and removal from service before further flight if burn holes are detected, in HPT stage 2 nozzles, P/Ns 2101M24G01, 2101M24G02, and 2101M24G03. This AD also requires mandatory removal from service of these HPT stage 2 nozzles at the next engine shop visit.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, we find that notice and opportunity for prior public comment are unnecessary, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the Docket Number FAA–2012–1293 and Directorate Identifier 2012–NE–45–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Costs of Compliance

We estimate that this AD will affect no engines installed on airplanes of U.S. registry. We also estimate that it would take about two hours per engine to perform a borescope inspection of the HPT stage 2 nozzle. The average labor rate is $85 per work hour. Required parts would cost about $487,312 per engine. Based on these figures, we estimate the cost of this proposed AD to U.S. operators to be $0.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–02–06 Engine Alliance: Amendment 39–17327; Docket No. FAA–2012–1293; Directorate Identifier 2012–NE–45–AD.

(a) Effective Date

This AD is effective February 12, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Engine Alliance GP7270 and GP7277 turbofan engines with a high-pressure turbine (HPT) stage 2 nozzle, part number (P/N) 2101M24G01, 2101M24G02, or 2101M24G03, installed.

(d) Unsafe Condition

This AD was prompted by a report received of inadequate cooling of the HPT stage 2 nozzle, leading to damage to the HPT stage 2 nozzle, burn-through of the turbine case, and engine shutdown. Investigation revealed that the event was caused by damage to the HPT stage 2 nozzle due to inadequate part cooling. We are issuing this AD to prevent HPT stage 2 nozzle failure, leading to uncontrolled fire, engine shutdown, and damage to the airplane.

(e) Compliance

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

(f) Borescope Inspections of the HPT Stage 2 Nozzle

(1) Initially borescope inspect (360 degrees) the HPT stage 2 nozzle at the following:

(i) Before accumulating 1,500 cycles-since-new (CSN), if the nozzle has fewer than 1,450 CSN on the effective date of this AD.

(ii) Within the next 50 cycles, if the nozzle has 1,450 or more CSN on the effective date of this AD.

(2) Thereafter, repetitively borescope inspect (360 degrees) the HPT stage 2 nozzle within every 100 additional cycles-in-service.

(3) If during any inspection required by this AD, any burn holes are detected through the surface of the nozzle, remove the nozzle from service before further flight.

(g) Mandatory Removal From Service of the HPT Stage 2 Nozzles

At the next engine shop visit, remove HPT stage 2 nozzles P/N 2101M24G01, 2101M24G02, and 2101M24G03 from service.

(h) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine

flanges except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(i) 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.

(j) Related Information

For more information about this AD, contact Martin Adler, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7157; fax: 781–238–7199; email: *martin.adler@faa.gov*.

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on January 15, 2013.

Thomas A. Boudreau,

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

[FR Doc. 2013–01552 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1289; Directorate Identifier 2012–NE–43–AD; Amendment 39–17323; AD 2013–02–02]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines Modified by Supplemental Type Certificate SE00034EN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for CFM International, S.A. CFM56–3, CFM56–3B, and CFM56–3C turbofan engines. This AD requires removal from service of certain high-pressure turbine (HPT) disks manufactured by Global Material Solutions of Pratt & Whitney, at reduced maximum life limits. This AD was prompted by a report of a forging process error during manufacture of these HPT disks. We are issuing this AD to prevent uncontained release of multiple turbine blades, damage to the engine, and damage to the airplane.

DATES: This AD is effective January 28, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 28, 2013.

We must receive comments on this AD by March 14, 2013.

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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605. 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*; 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 AD, the regulatory evaluation, any comments received, and other information. The street 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:

Discussion

We received a report from Global Material Solutions of Pratt & Whitney, of a forging process error that occurred during manufacture of HPT disks, part number (P/N) 880026, serial numbers (S/Ns) GLKBAA9307, GLKBAA9335, GLKBAA9404, GLKBAA9407, and GLKBAA9409. During the last forging operation of the manufacturing process, the forging temperature at the disk rim was incorrect. This resulted in below allowable creep properties of the HPT disk, which reduced the calculated maximum life limits. This condition, if not corrected, could result in uncontained release of multiple turbine blades, damage to the engine, and damage to the airplane.

FAA's Determination

We are issuing 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.

AD Requirements

This AD requires removal of the affected HPT disks at reduced maximum life limits, as follows:

- For CFM56–3, CFM56–3B and CFM56–3C turbofan engines operating to 20,100 lbs maximum takeoff (MTO) thrust, remove the HPT disk on or before accumulating 8,000 cycles-since-new (CSN).
- For CFM56–3B and CFM56–3C turbofan engines operating to 22,100 lbs MTO thrust, remove the HPT disk on or before accumulating 8,000 CSN.
- For CFM56–3C turbofan engines operating to 23,500 lbs MTO thrust, remove the HPT disk on or before accumulating 4,000 CSN.
- For HPT disks that have been used in multiple models or thrust installations, the formula in the ADDED DATA section of Pratt & Whitney Special Instruction 6F–12 dated December 21, 2012 must be used to calculate the remaining life on the disk.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days. Accordingly, this AD is effective upon publication.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket Number FAA–2012–1289; Directorate Identifier 2012–NE–43–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory,

economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–02–02 CFM International, S.A.: Amendment 39–17323; Docket No. FAA–2012–1289; Directorate Identifier 2012–NE–43–AD.

(a) Effective Date

This AD is effective January 28, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International, S.A. CFM56–3, CFM56–3B, and CFM56–3C turbofan engines, modified by Supplemental Type Certificate SE00034EN, with a high-pressure turbine (HPT) disk, part number (P/N) 880026, serial number (S/N) GLKBAA9307, GLKBAA9335, GLKBAA9404, GLKBAA9407, or GLKBAA9409, installed.

(d) Unsafe Condition

This AD was prompted by a report of a forging process error during manufacture of these HPT disks. We are issuing this AD to prevent uncontained release of multiple turbine blades, damage to the engine, and damage to the airplane.

(e) Compliance

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

(1) For CFM56–3, CFM56–3B, and CFM56–3C turbofan engines operating to 20,100 lbs maximum takeoff (MTO) thrust, remove the HPT disk from service on or before accumulating 8,000 cycles-since-new (CSN).

(2) For CFM56–3B and CFM56–3C turbofan engines operating to 22,100 lbs MTO thrust, remove the HPT disk from service on or before accumulating 8,000 CSN.

(3) For CFM56–3C turbofan engines operating to 23,500 lbs MTO thrust, remove the HPT disk from service on or before accumulating 4,000 CSN.

(4) For HPT disks that have been used in multiple models or thrust installations, the formula in the ADDED DATA section of Pratt & Whitney Special Instruction 6F–12 dated December 21, 2012 must be used to calculate the remaining life on the disk.

(f) Alternative Methods of Compliance (AMOCs)

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

(g) Related Information

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

(h) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Corp. Special Instruction No. 6F–12, dated December 21, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605.

(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.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on January 14, 2013.

Thomas Boudreau,

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

[FR Doc. 2013–01360 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 522

[Docket No. FDA–2012–N–0002]

New Animal Drugs; Cefpodoxime; Meloxicam

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug

applications (NADAs) and abbreviated new animal drug applications (ANADAs) during December 2012. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable.

DATES: This rule is effective January 28, 2013.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect approval actions for several original ANADAs during December 2012, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the Center for Veterinary Medicine FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.*

TABLE 1—ORIGINAL ANADAS APPROVED DURING DECEMBER 2012

NADA/ ANADA	Sponsor	New animal drug product name	Action	21 CFR section	FOIA summary	NEPA review
200–485	Accord Healthcare, Inc., 1009 Slater Rd., suite 210–B, Durham, NC 27703.	Meloxicam Injection	Original approval as a generic copy of NADA 141–219.	522.1367	yes	CE[1]
200–491	Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland.	LOXICOM (meloxicam) Solution for Injection.	Original approval as a generic copy of NADA 141–219.	522.1367	yes	CE[1]
200–543	Putney, Inc., 400 Congress St., suite 200, Portland, ME 04101.	Cefpodoxime Proxetil Tablets	Original approval as a generic copy of NADA 141–232.	520.370	yes	CE[1]

[1] The Agency has determined under 21 CFR 25.33 that this action is categorically excluded (CE) from the requirement to submit an environmental assessment or an environmental impact statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. In § 510.600, in the table in paragraph (c)(1), alphabetically add an entry for ''Accord Healthcare, Inc.'' and revise the entry for ''Jurox Pty. Ltd.''; and in the table in paragraph (c)(2), numerically add an entry for ''016729'' and revise the entry for ''049480'' to read as follows:

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Accord Healthcare, Inc., 1009 Slater Rd., suite 210–B, Durham, NC 27703	016729
* * * * *	
Jurox Pty. Ltd., 85 Gardiner St., Rutherford, NSW 2320, Australia	049480
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
016729	Accord Healthcare, Inc., 1009 Slater Rd., suite 210–B, Durham, NC 27703
* * * * *	
049480	Jurox Pty. Ltd., 85 Gardiner St., Rutherford, NSW 2320, Australia
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.370 [Amended]

■ 4. In paragraph (b) of § 520.370, remove ''No. 000009'' and in its place add ''Nos. 000009 and 026637''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 5. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1367 [Amended]

■ 6. In paragraph (b) of § 522.1367, remove ''No. 000010'' and in its place add ''Nos. 000010, 016729, and 055529''.

Dated: January 22, 2013.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2013–01647 Filed 1–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. FHWA–2012–0098]

RIN 2125–AF47

Construction and Maintenance—Culvert Pipe Selection

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Section 1525 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) requires the Secretary of Transportation to modify FHWA regulations to ensure that States shall have the autonomy to determine culvert and storm sewer material types to be included in the construction of a project on a Federal-aid highway. This final rule is intended to implement this legislative requirement.

DATES: This rule is effective February 27, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Yakowenko, Office of Program Administration, (202) 366–1562, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov*. Retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days a year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov/federal-register* and the Government Printing Office's Web page at: *http://www.gpo.gov/fdsys*.

Background

Under the ''Administrative Procedure Act'' (5 U.S.C. 553(b)), an agency may waive the normal notice and comment procedure if it finds, for good cause, that it would be impracticable, unnecessary, or contrary to the public interest. The FHWA finds that notice and comment for this rule is unnecessary because it implements a congressional mandate to amend 23 CFR 635.411 to allow States to choose culvert and storm sewer material type. The regulatory amendments in this final rule are based upon the statutory language and FHWA does not anticipate receiving meaningful comments to alter the regulation given the explicit mandate. Accordingly, FHWA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment.

Regulatory History

The ''General Material Requirements,'' found in 23 CFR part 635 subpart D, supports competitive bidding principles in 23 U.S.C. 112 with certain requirements and procedures relating to product and material selection and use on Federal-aid highway projects.

Securing competition in the area of culvert pipe material selection has been a concern of FHWA since the 1960s. In an internal Bureau of Public Roads (now FHWA) Memorandum issued October 7, 1963, the Bureau of Public Roads addressed the issue of culvert selection and in general product selection in writing:

> * * * a State's desire to select only one type of pipe for bidding purposes on the basis that such selection will favor State and local public interests cannot be accepted by Public Roads.

This Memorandum further states,

> Except where otherwise dictated by engineering evaluations of individual site conditions, there is no basic disadvantage in specifying all acceptable alternate types and either calling for competitive bids on them or permitting the successful bidder to name the type he will furnish. Even when it is indicated that one type might receive lower bid prices, competitive bidding of the one type with other acceptable types could result in lower contract prices.

Through a revision to Policy & Procedure Memorandum 21–6.3 dated October 3, 1972, the FHWA included a table entitled ''Summary of Acceptable Criteria for Specifying Types of Culvert Pipes.'' On September 30, 1974, the table was included in the CFR as an appendix to 23 CFR 635.117 (39 FR 35152). According to § 635.117(d), as in effect in 1974, Appendix A

> * * * sets forth the FHWA requirements regarding the specification of alternate types of culvert pipes, and the number and types of such alternatives which must be set forth in the specifications for various types of drainage installations.

On September 10, 1976, this section was redesignated as 23 CFR 635.411 (41 FR 36204) and remained unchanged until 2006, though the market had changed to the extent that Appendix A no longer adequately encompassed the universe of available alternatives.

Section 5514 of the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA–LU, Pub. L. 109.59; August 10, 2005), titled ''Competition for Specification of Alternative Types of Culvert Pipes,'' required the Secretary of Transportation to ensure that States provide for competition with respect to the specification of alternative types of culvert pipes through requirements that are commensurate with competition for other construction materials. To implement this provision, the FHWA issued a final rule on November 15, 2006 (71 FR 66450), that deleted Appendix A from the CFR.

MAP–21 Legislative Provision

On July 6, 2012, President Obama signed the *Moving Ahead for Progress in the 21st Century Act* (MAP–21), Public Law 112–141, 126 Stat. 405. Section 1525 of MAP–21, ''State Autonomy for Culvert Pipe Selection,'' requires the Secretary of Transportation, within 180 days of the date of enactment of MAP–21 (October 1, 2012) to modify section 635.411 of title 23 CFR, to ensure that States shall have the autonomy to determine culvert and storm sewer material types to be included in the construction of a project on a Federal-aid highway. The use of the word ''autonomy'' in this section gives the State transportation departments (State DOTs) and other direct recipients the sole authority and discretion to make a decision regarding culvert and storm sewer material types without any input or approval from the FHWA. As a result, a State DOT may choose to exercise its autonomy regarding culvert and storm sewer type selection to either:

(a) Include all material types deemed acceptable as a result of engineering and economic analysis, or

(b) Restrict the pool of available culvert and storm sewer material types to those which the State DOT would select.

Although section 1525 gives the States the autonomy to determine culvert and storm sewer material types, section 1525 does not relieve the States of compliance with other applicable

Federal requirements, such as Buy America, culvert design standards in 23 CFR part 625, and the restriction against the use of patented and proprietary products in 23 CFR 635.411. Also, while a State may choose to specify only one type of material, the State may not specify only one specific product among several of the same material type that is chosen unless otherwise permitted to do so under section 635.411. Also, with respect to design standards, the specified type would have to conform to engineering design standards such as structural load, hydraulic capacity, corrosion resistance, etc., and would have to fit into the natural and constructed environment. These culvert design standards are encompassed in the various standards found in 23 CFR part 625.

Analysis

23 CFR 635.411

This final rule amends subsection 635.411 to add a paragraph (f) to grant autonomy to State DOTs regarding the selection of culvert and storm sewer material types to be included in Federal-aid highway construction projects. The language would not permit FHWA to limit Federal-aid participation in costs based on the culvert or storm sewer material type selected by the State DOT. However, the State DOTs' use of culvert and storm sewer material shall otherwise comply with all applicable Federal requirements, such as the provisions regarding the use of patented and proprietary products set forth in this section as well as the design standards set forth in 23 CFR part 625.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. Since this rulemaking implements a congressional mandate to merely allow States to choose culvert and storm sewer material type, and does not require or prohibit the use of a particular type of culvert and storm sewer material, the FHWA anticipates that the economic impact of this rulemaking would be minimal. The FHWA anticipates that this final rule will not adversely affect, in a material way, any sector of the economy. Additionally, this action complies with the principles of Executive Order 13563. In addition, these changes will not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

Since FHWA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply. However, the FHWA has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small entities. The amendment addresses obligation of Federal funds to States for Federal-aid highway projects. As such, it affects only States and States are not included in the definition of small entity set forth in 5 U.S.C. 601.

Unfunded Mandates Reform Act of 1995

This final rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995) as it will not result in the expenditure by State, local, tribal governments, in the aggregate, or by the private sector, of $148.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this action would not have a substantial direct effect or sufficient federalism implications on the States. The FHWA has also determined that this action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly FHWA solicits comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has analyzed this final rule under the PRA and has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20).

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this final rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this final rule would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated

November 6, 2000, and believes that the action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. This final rule addresses obligations of Federal funds to States for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order since it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned 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. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 635

Construction materials, Design-build, Grant programs, Transportation, Highways and roads, Culvert material types.

Issued on: January 17, 2013.

Victor M. Mendez,

Federal Highway Administrator.

In consideration of the foregoing, title 23, Code of Federal Regulations, part 635 is amended as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

■ 1. Revise the authority citation for part 635 to read as follows:

Authority: Sec. 1525 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.;* Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

■ 2. Amend § 635.411 by adding paragraph (f) to read as follows:

§ 635.411 Material or product selection.

* * * * *

(f) State transportation departments (State DOTs) shall have the autonomy to determine culvert and storm sewer material types to be included in the construction of a project on a Federal-aid highway.

[FR Doc. 2013–01583 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–1008]

RIN 1625–AA00

Safety Zone; Military Ocean Terminal Concord Safety Zone, Suisun Bay, Military Ocean Terminal Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a safety zone in the navigable waters of Suisun Bay near Military Ocean Terminal Concord, CA in support of military onload and offload operations. This safety zone is established to enhance the safety of mariners transiting the area in the unlikely event of an ordnance related mishap. All persons or vessels are prohibited from anchoring or otherwise loitering in the safety zone during military onloads and offloads without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective with actual notice from January 2, 2013 until January 28, 2013. This rule is effective in the *Code of Federal Regulations* on January 28, 2013. Comments and related materials must be received by the Coast Guard on or before April 29, 2013.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2012–1008. 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.

You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11–PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
MOTCO Military Ocean Terminal Concord
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as

having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8-1/2 by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. 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,* 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.

3. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before December 20, 2012, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

This interim rule will regulate the waters of Suisun Bay in vicinity of the Military Ocean Terminal Concord (MOTCO) in Concord, California. This rule will be enforced in conjunction with the MOTCO security zone, established in 33 CFR § 165.1199, which restricts vessel traffic during military onloads and offloads at MOTCO.

The Coast Guard is issuing this 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 an NPRM with respect to this rule because to do so would be impracticable. Due to the fact that military loading operations are ongoing, there is a need to begin enforcement of a no-loitering zone immediately, and a notice and comment period would expose the public to additional dangers.

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** because to do otherwise would be impracticable, as immediate prevention measures are needed to protect the maritime public during military onload and offload operations.

C. Basis and Purpose

The legal basis for the proposed rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C 1221 et seq.).

The U.S. Army's 834th Transportation Battalion requested that the U.S. Coast Guard develop a no-loitering area around the piers at Military Ocean Terminal Concord, CA during military onloads and offloads. In the unlikely event of an explosion due to military loading operations, a no-loitering zone is needed to minimize the likelihood of public presence in the projected blast zone, to protect persons and vessels from the dangers associated with military onload and offload operations.

A safety zone is necessary in the vicinity of MOTCO to prevent persons and vessels from anchoring or otherwise loitering in the zone between 500 yards of MOTCO Pier 2 in position 38°03′30″ N, 122°01′14″ W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656 (the perimeter of the existing security zone) and 3,000 yards of the pier.

D. Discussion of Proposed Rule

The Coast Guard is establishing a safety zone in Suisun Bay near MOTCO in Concord California during military onloads and offloads. Given the potentially devastating impact of an ordnance mishap, the Coast Guard is implementing a safety zone around the MOTCO piers during military onloads and offloads. This rule will create a no-loitering area in the zone between 500 yards of MOTCO Pier 2 in position 38°03′30″ N, 122°01′14″ W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656 (the perimeter of the existing security zone) and 3,000 yards of the pier. The purpose of this safety zone is to prevent persons or vessels from anchoring or loitering within the potential blast zone around the MOTCO piers during military onloads and offloads. This safety zone will be effective for the entire duration of onload and offload operations.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes 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 safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts anchoring and/or loitering in the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will have access to the waterway for transitory purposes. The entities most likely to be affected by this rule are owners and operators of commercial vessels, and pleasure craft engaged in recreational activities and sightseeing.

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 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 owners and operators of commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. The safety zone does not restrict transitory use of the waterways and is in place to prevent anchoring and loitering within the blast zone. The maritime public will be advised via actual notice during the enforcement of this safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1198 to read as follows:

§ 165.1198 Safety zone; Military Ocean Terminal Concord Safety Zone, Suisun Bay, Military Ocean Terminal Concord, CA.

(a) *Location.* This safety zone is established in the navigable waters of Suisun Bay near Military Ocean Terminal Concord, CA (MOTCO) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656. Upon commencement of military onloads and offloads, the safety zone will encompass the navigable waters in the area between 500 yards of MOTCO Pier 2 in position 38°03′30″ N, 122°01′14″ W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18656 (the perimeter of the existing security zone) and 3,000 yards of the pier.

(b) *Enforcement period.* The zone described in paragraph (a) of this section will be enforced during all military onload and offload operations. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via actual notice on-scene during military onloads and offloads.

(c) *Regulations.* (1) The safety zone is open to all persons and vessels for transitory use.

(2) Persons and vessels operating within the safety zone may not anchor or otherwise loiter within the safety zone.

(3) Vessel operators desiring to anchor or otherwise loiter within the safety zone must contact Sector San Francisco Vessel Traffic Service at (415) 556–2760 or VHF Channel 14 to obtain permission.

(4) All persons and vessels transiting through or operating within the safety zone must comply with all directions given to them by the COTP or a designated representative.

(5) The public can contact Sector San Francisco Bay at (415) 399–3530 to obtain information concerning enforcement of this rule.

(d) *Enforcement.* All persons and vessels must comply with the instructions of the COTP or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by local law enforcement and the MOTCO police as necessary. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

Dated: January 2, 2013.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2013–01635 Filed 1–25–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1062]

RIN 1625–AA00

Safety Zone, Atlantic Intracoastal Waterway; Oak Island, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the temporary safety zone established on the waters of the Atlantic Intracoastal Waterway at Oak Island, North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance on the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina. The safety zone extension will temporarily restrict vessel movement within the designated area starting on February 14, 2013 through June 15, 2013.

DATES: This rule is effective from February 14, 2013 through June 15, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–1062]. 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 CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is extending the initial Temporary Final Rule USCG—2012–0431. On June 15, 2012 a Notice to Proposed Rulemaking was published in 77 FR 35906 for USCG -2012–0431. A subsequent Notice to Proposed Rulemaking was published on September 13, 2012 in 77 FR 56587 for USCG–2012–0811. We received no comments on this proposed rule.

B. Basis and Purpose

North Carolina Department of Transportation has awarded a contract to Marine Contracting Corporation of Virginia Beach, Virginia to perform bridge maintenance on the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina. The contract provides for replacing the fender system which commenced on September 12, 2012 with an initial completion date of December 12, 2012. Subsequently, the contractor was granted an extension by North Carolina Department of Transportation until February 14, 2013. However, due to the presence of rock on the sea bed, which has impacted the construction progress, NCDOT has granted an additional extension until June 15, 2013 to complete the bridge maintenance. The contractor will utilize a 140 foot deck barge with a 40 foot beam as a work platform and for equipment staging. This safety zone will provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction of horizontal clearance. During this period the Coast Guard will require a one hour notification to the work supervisor at the NC 133 Fixed Bridge at the Atlantic Intracoastal Waterway crossing, mile 311.8, Oak Island, North Carolina. The notification requirement will apply during the maintenance period for vessels requiring a horizontal clearance of greater than 50 feet.

C. Discussion of the Final Rule

The temporary safety zone will encompass the waters directly under the

NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina (33°55′18″ N/078°04′22″ W). All vessels transiting this section of the waterway requiring a horizontal clearance of greater than 50 feet will be required to make a one hour advanced notification to the work supervisor at the NC 133 Fixed Bridge while the safety zone is in effect. The initial safety zone was in effect from 8 a.m. September 12, 2012 to 8 p.m. December 12, 2012. An extension changed the end date of the zone to February 14, 2013. Here, the additional extension will again extend the end date from 8 p.m. February 14, 2013 to 8 p.m. June 15, 2013.

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. This rule does not restrict traffic from transiting through the noted portion of the Atlantic Intracoastal Waterway; it only imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 50 feet.

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 received no comments from the Small Business Administration on this rule. 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 affects the following entities, some of which may be small entities: The owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 p.m. February 14, 2013 through 8 p.m. June 15, 2103.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to the entire width of this section of the Atlantic Intracoastal Waterway, vessel traffic will be able to request passage by providing a one hour advanced notification. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, 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 temporary § 165.T05–1062 to read as follows:

§ 165.T05–1062 Safety Zone; Atlantic Intracoastal Waterway, Oak Island, NC.

(a) *Regulated area.* The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina (33°55′18″ N/078°04′22″ W).

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–1062. In addition the following regulations apply:

(1) All vessels requiring greater than 50 feet horizontal clearance to safely transit through the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina must contact the work supervisor on VHF–FM marine band radio channels 13 and 16 one hour in advance of intended transit.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(3) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions.*

(1) Captain of the Port North Carolina means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(3) Work Supervisor means the contractors on site representative.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 8 p.m. February 14, 2013 through 8 p.m. June 15, 2013, unless cancelled earlier by the Captain of the Port.

Dated: January 11, 2013.

A. Popiel,

Captain, U.S. Coast Guard Captain of the Port Sector North Carolina.

[FR Doc. 2013–01634 Filed 1–25–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 326

RIN 0710–AA66

Civil Monetary Penalty Inflation Adjustment

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Direct final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its regulations to adjust its Class I civil penalties under the Clean Water Act and the National Fishing Enhancement Act to account for inflation. The adjustment of civil penalties to account for inflation is required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Since we have not made any adjustments to our Class I penalties to account for inflation since 2004, we are making a second round of penalty adjustments to account for inflation. Using the adjustment criteria provided in the statute, the Class I civil penalty under the Clean Water Act remains at $11,000 per violation, but the maximum civil penalty increases to $32,500. Under the National Fishing Enhancement Act, the Class I civil penalty remains at $11,000 per violation. Increasing the maximum amount of the Class I civil penalty under the Clean Water Act to account for inflation will maintain the deterrent effects of the penalty.

DATES: This rule is effective March 29, 2013 without further notice, unless the Corps receives adverse comment by February 27, 2013. If we receive such adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You may submit comments, identified by docket number COE–2011–0024, by any of the following methods:

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

Email: david.b.olson@usace.army.mil. Include the docket number, COE–2011–0024, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, ATTN: CECW–CO (David Olson), 441 G Street NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2011–0024. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that 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 regulations.gov or email. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or by email at *david.b.olson@usace.army.mil* or access the access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx* .

SUPPLEMENTARY INFORMATION:

Executive Summary

This rule is an inflation adjustment for civil penalties administered by the U.S. Army Corps of Engineers. It is necessary to comply with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note) (FCPIAA). The FCPIAA requires Federal agencies to periodically increase their civil penalties to account for inflation to maintain the deterrent effects of those penalties. On August 3, 2011, the Deputy Secretary of Defense delegated to the Secretary of the Army the authority and responsibility to adjust penalties administered by the U.S. Army Corps of Engineers. On August 29, 2011, the Secretary of the Army delegated that authority and responsibility to the Assistant Secretary of the Army for Civil Works.

The maximum Class I civil penalty for violations under Section 309(g) of the Clean Water Act would increase from $27,500 to $32,500. Because of the rounding rules of the FCPIAA, the minimum penalty would remain unchanged at $11,000 per violation. The Class I civil penalty for violations of Section 205(e) of the National Fishing Enhancement Act would also remain at $11,000 per violation.

This rule would not result in any additional costs to implement the Corps Regulatory Program, because the Class I civil penalties have been in effect since 1990. This rule merely adjusts those Class I civil penalties to account for inflation, as required by the FCPIAA. This rule will result in additional costs to members of the regulated public who do not comply with their Clean Water Act section 404 permits and a receive a final Class I civil administrative penalty order from a District Engineer, because it would increase the maximum penalty amount from $27,500 to $32,500. The benefit of this rule would be to increase the maximum Class I civil penalty amount to account for inflation and maintain the deterrent provided by that Class I civil penalty.

Background

Pursuant to Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended, each Federal agency is required to issue regulations adjusting for inflation the civil monetary penalties that can be imposed pursuant to such agency's statutory authorities. The Corps initial adjustment to each civil monetary penalty under Section 309(g) of the Clean Water Act and Section 205(e) of the National Fishing Enhancement Act was published in the June 25, 2004, issue of the **Federal Register** (69 FR 35515) and became effective on July 26, 2004. The initial adjustment was based on the 10 percent increase provided by Section 6 of the Federal Civil Penalties Inflation Adjustment Act.

The FCPIAA requires subsequent adjustments to be made at least once every four years following the previous adjustment. The FCPIAA requires that the adjustment reflect the percentage increase in the Consumer Price Index (CPI) between June of the calendar year preceding the adjustment and June of the calendar year in which the amount was last set or adjusted. As the initial adjustment was made and published on June 25, 2004, the inflation adjustment was calculated by comparing the CPI for June 2004 (189.700) with the CPI for June 2012 (229.478), resulting in an inflation adjustment of 21.0 percent.

The amount of each civil monetary penalty was multiplied by 21.0 percent (the inflation adjustment) and the resulting increase amounts were rounded in accordance with the rounding requirements of the FCPIAA. As a result of the rounding rules in the FCPIAA, the Class I civil penalty for violations under Section 309(g) of the Clean Water Act would remain at $11,000 per violation. The maximum penalty would increase to $32,500. The Class I civil penalty for violations under Section 205(e) of the National Fishing Enhancement Act would remain at $11,000 per violation, because of the rounding rules in the statute.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, regarding plain language, this preamble is written using plain language. The use of ''we'' in this notice refers to the Corps and the use of ''you'' refers to the reader. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Production Act, 44 U.S.C. 3501 et seq. This rule adjusts our civil penalty amounts to comply with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Therefore, this action is not subject to the Paperwork Reduction Act.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the 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. For the Corps regulatory program under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003).

Executive Order 12866 and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Corps must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is not a ''significant regulatory action'' because it does not meet any of these four criteria. This rule adjusts the maximum Class I civil penalty amount for violations of permit conditions and limitations for activities that involve discharges of dredged or fill material into waters of the United States.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' The phrase ''policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have Federalism implications. We do not believe that adjusting our Class I civil penalties to account for inflation will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule does not impose new substantive requirements. In addition, this rule will not impose any additional substantive obligations on State or local governments since it is applicable only to permittees who violate the conditions and limitations of certain Corps permits. Therefore, Executive Order 13132 does not apply to this rule.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. The rule is consistent with current agency practice, does not impose new substantive requirements, and therefore would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires the agencies 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 Corps 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 why that alternative was not adopted. Before the Corps establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, they must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. This rule adjusts civil penalties in accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. This rule is consistent with current agency practice, does not impose new substantive requirements and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, this rule is not subject to the requirements of Section 203 of UMRA.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

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

Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

This rule is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The phrase ''policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This rule adjusts the civil penalties in 33 CFR 326.6 to account for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. It is generally consistent with current agency practice and does not impose new substantive requirements. Therefore, Executive Order 13175 does not apply to this rule.

Environmental Documentation

The Corps prepares appropriate environmental documentation, including Environmental Impact Statements when required, for all permit decisions. Therefore, environmental documentation under the National Environmental Policy Act is not required for this rule. This rule only revises our Class I civil penalties to account for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Appropriate environmental documentation has been, or will be, prepared for each permit action that is subject to the Class I administrative penalty process.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended 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. We 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. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

This rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities. This rule relates solely to the adjustments to Class I civil penalties under Section 309(g)(2)(A) of the Clean Water Act and Section 205(e) of the National Fishing Enhancement Act to account for inflation.

Executive Order 13211

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule relates only to the adjustments to Class I civil penalties under Section 309(g)(2)(A) of the Clean Water Act and Section 205(e) of the National Fishing Enhancement Act to account for

inflation. This rule is consistent with current agency practice, does not impose new substantive requirements, and therefore will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 33 CFR Part 326

Administrative practice and procedure, Intergovernmental relations, Investigations, Law enforcement, Navigation (water), Water pollution control, Waterways.

Dated: January 22, 2013.

Approved by: Jo-Ellen Darcy,

Assistant Secretary of the Army (Civil Works).

For the reasons set forth in the preamble, the Corps amends 33 CFR part 326 as follows:

PART 326—ENFORCEMENT

■ 1. The authority citation for 33 CFR part 326 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2104; 33 U.S.C. 1319; 28 U.S.C. 2461 note.

■ 2. Amend § 326.6 by revising paragraph (a)(1) to read as follows:

§ 326.6 Class I administrative penalties.

(a) *Introduction.* (1) This section sets forth procedures for initiation and administration of Class I administrative penalty orders under Section 309(g) of the Clean Water Act, and Section 205 of the National Fishing Enhancement Act. Under Section 309(g)(2)(A) of the Clean Water Act, Class I civil penalties may not exceed $11,000 per violation, except that the maximum amount of any Class I civil penalty shall not exceed $32,500. Under Section 205(e) of the National Fishing Enhancement Act, penalties for violations of permits issued in accordance with that Act shall not exceed $11,000 for each violation.

* * * * *

[FR Doc. 2013–01659 Filed 1–25–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 330

RIN 0710–AA60

Nationwide Permit Program

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending its nationwide permit regulations so that district engineers can issue nationwide permit verification letters that expire on the same date a nationwide permit expires. This amendment will provide regulatory flexibility and efficiency, by allowing district engineers to issue nationwide permit verifications that are valid for the same period of time a nationwide permit is in effect. We are also amending these regulations to reflect the 45-day pre-construction notification review period that has been in effect for the nationwide permit ''pre-construction notification'' general condition since June 7, 2000.

DATES: *Effective Date:* February 27, 2013.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO, 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or by email at *david.b.olson@usace.army.mil,* or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx.*

SUPPLEMENTARY INFORMATION:

Executive Summary

The U.S. Army Corps of Engineers (Corps) issues nationwide permits (NWPs) to authorize certain activities that require Department of the Army permits under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The NWPs authorize activities that have minimal individual and cumulative adverse environmental effects. The NWPs are proposed, issued, modified, reissued, and revoked from time to time (generally five years), after an opportunity for public notice and comment.

Some NWPs require project proponents to notify Corps district engineers prior to commencing NWP activities. These notifications are called pre-construction notifications (PCNs), and they provide district engineers with opportunities to confirm whether or not the proposed activities qualify for NWP authorization. For most NWPs, the district engineer has to respond within 45 days of receipt of a complete PCN. If, after reviewing the PCN, the district engineer determines that the proposed activity qualifies for NWP authorization, the district engineer issues an NWP verification letter to the project proponent. The NWP verification may contain special conditions to ensure that the NWP activity results in minimal individual and cumulative effects on the aquatic environment and the Corps public interest review factors.

This rule has two effects:

1. Most NWPs, through the application of the PCN general condition, have a 45-day review period for PCNs. The NWP regulations, however, dating back to 1991, still specify the default PCN review period as 30 days. This final rule makes the NWP regulation consistent with the current NWP PCN general condition, which will reduce confusion and ensure consistent implementation.

2. NWPs are reissued every 5 years, but NWP verification letters expire within two years. This rule will change the verification letter expiration date to be the same as the expiration date of the applicable NWP(s). This will ease the regulatory burden on permittees whose construction is not completed within two years by making it unnecessary to reverify the NWP authorization.

Background

The last reissuance of the NWPs, including the PCN general condition (general condition 31), was published in the February 21, 2012, issue of the **Federal Register** (77 FR 10184). The 2012 NWPs expire on March 18, 2017. The Corps regulations governing the NWP program are provided at 33 CFR part 330. The current NWP regulations were published in the **Federal Register** on November 22, 1991 (56 FR 59110).

Section 330.1(e) of the 1991 rule provided district engineers with 30 days to review notifications to determine whether proposed NWP activities result in minimal individual and cumulative adverse environmental effects and are in the public interest. Section 330.6(a)(3)(ii) of the 1991 regulation stated that NWP verification letters can be valid for no more than two years. Since 1991, there have been substantial changes to the NWP program and other Federal programs that warrant amendments to these provisions.

In the November 30, 2004, issue of the **Federal Register** (69 FR 69563) we published a proposed rule to amend these provisions of the NWP regulations:

1. In § 330.1(e)(1) and § 330.4(c)(6) and (d)(6), we proposed to change the PCN review period from 30 days to 45 days, to conform with the length of the PCN review period that has been in use for certain NWPs since 1996. On June 7, 2000, the 45-day PCN review period was applied to all NWPs requiring pre-construction notification (see 65 FR 12818). The 45-day PCN review period is found in the ''pre-construction

notification'' general condition of the NWPs (currently general condition 31).

2. In § 330.6(a)(3)(ii) we proposed to change the length of time an NWP verification would be valid from two years to the expiration date of the NWP.

Comments and Revisions

In response to the proposed rule, 15 comments were received. One commenter expressed general support for the proposed revisions and two commenters said that the proposed rule should be withdrawn.

Two commenters said that the proposed rule violates the Administrative Procedure Act (APA) because the impacts of proposed rule are not fully explained. These commenters also said that changing the PCN review period from 30 days to 45 days is not consistent with agency practice, because the Corps did use APA rulemaking procedures to change the PCN review period to 45 days.

We complied with APA requirements when we undertook this rulemaking to amend the NWP regulations. In the preamble to the November 30, 2004, notice of proposed rulemaking, we provided a concise explanation of the basis and purpose of the proposed amendments to specific sections of 33 CFR part 330, and discussed their anticipated effects. As discussed in the proposed rule, the purpose of amending these sections of 33 CFR part 330 is to make the NWP regulation consistent with those provisions in the general condition addressing the timing of PCN processing that has been in effect for all NWPs since June 7, 2000, and to provide regulatory efficiency when issuing NWP verification letters.

We also complied with APA requirements when we issued and reissued NWPs in 1996, 2000, 2002, 2007, and 2012, with 45-day PCN review periods in the ''pre-construction notification'' general condition. In the June, 17, 1996, proposal to reissue NWPs (61 FR 30786), we solicited comments on increasing the notification review period for NWP 26 from 30 days to 45 days. In the July 21, 1999, proposal to issue five new NWPs and modify six existing NWPs to replace NWP 26 (64 FR 39341), we requested comments on increasing the PCN review period to 45 days for all NWPs. In the August 9, 2001 (66 FR 42070), September 26, 2006 (71 FR 56296), and February 16, 2011 (76 FR 9174) proposals to issue and reissue NWPs, we solicited comments from interested parties on a proposed PCN review period of 45 days. Comments received in response to those proposals were fully considered, and the 45-day PCN review period was adopted in the final NWPs. In the preambles to the **Federal Register** notices announcing the final NWPs, we also provided responses to comments that were received. Therefore, in each of these cases, the APA procedures were used to promulgate the terms and conditions of the NWPs. Today's final rule concludes the rulemaking process for making the appropriate sections of 33 CFR part 330 consistent with the NWPs currently in effect, and for changing the length of time an NWP verification could be in effect.

Two commenters asserted that the proposed rule violates the Regulatory Flexibility Act (RFA), because its impacts are not fully explained, and the Corps did not discuss economic impacts or their potential significance. One commenter said that the 30-day completeness review and 45-day PCN review period adopted in the 2000 NWPs and subsequent NWPs must be in the final rule or else the impacts on small entities would be substantial. This commenter also stated that the final rule needs to include the provisions of the ''construction period'' general condition for the 2002 NWPs for impacts on small entities to be insubstantial.

We have revised our RFA analysis to better explain the impacts of the final rule on small entities. The RFA analysis is provided below in the ''Administrative Requirements'' section of this preamble. We do not agree that it is necessary to incorporate the 30-day completeness review into § 330.1(e)(1) for this rule to have an insubstantial impact on small entities. The 30-day completeness review is currently addressed through the terms of general condition 31 (pre-construction notification) of the 2012 NWPs, as published in the February 21, 2012, issue of the **Federal Register**.

For reasons cited in the March 12, 2007, notice of the reissuance of the NWPs, the ''construction period'' general condition that was adopted in 2002 was not retained in the current NWPs (see 72 FR 11171). Removal of this general condition will not cause the NWPs to result in substantial impacts on small entities. Its removal was necessary to be consistent with Section 404(e)(2) of the Clean Water Act.

Forty-Five Day PCN Review Period

Several commenters objected to increasing the PCN review period in 33 CFR part 330 from 30 to 45 days. Several commenters stated that the longer PCN review period is contrary to the original intent of NWP program, which is to streamline the authorization process. Two commenters said that increasing the PCN review period would delay time sensitive activities, such as activities occurring in areas with short construction seasons. One commenter stated that changes to the ''pre-construction notification'' general condition for the nationwide permits does not require conforming changes to part 330, since permit conditions can be more stringent than regulations. Another commenter said that it is unnecessary to change the NWP regulations, since the timing requirements in the ''pre-construction notification'' general condition can change whenever the NWPs are reissued. Two commenters stated that the proposed changes will have significant impacts on small entities when they are compared to the NWP regulations promulgated in 1991.

Changing the PCN review period in 33 CFR part 330 from 30 days to 45 days will make the NWP regulation consistent with the ''pre-construction notification'' general condition for the current NWPs. It should also be noted that the 2007 and 2012 NWPs were promulgated as rules under the Administrative Procedures Act. By establishing the same time frames in the NWPs and their governing regulations, this amendment will also help ensure consistent interpretation and implementation of the NWP terms and conditions and the NWP regulations.

The longer processing times for NWP verification requests are not directly due to changes to the ''pre-construction notification'' general condition or the Corps' regulations governing the NWP program. Longer processing times are a result of the increased complexity of the regulatory environment that has occurred since 1991 as a result of judicial decisions and changes in laws and regulations. Since the 1991 rule was issued, there have been substantial changes in Federal laws and regulations that have affected the implementation of the Corps Regulatory Program, as well as changes in agency practices and policies such as compensatory mitigation requirements and jurisdiction. These changes have caused increased processing times for NWP PCNs, as well as applications for other types of DA permits.

For example, the promulgation of regulations in 1997 and 2002 to implement the essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act has resulted in an additional consultation requirement for many activities authorized by Corps permits. As another example, the Advisory Counsel on Historic Preservation issued revised regulations in 2000 and 2004

that govern Section 106 of the National Historic Preservation Act, which has resulted in changes in processing procedures for DA permits under interim guidance issued by the Corps on April 25, 2005, and January 31, 2007.

Compensatory mitigation is often required to ensure that NWP activities result in minimal individual and cumulative adverse effects on the aquatic environment. Compensatory mitigation proposals can be complex documents that require technical review to determine whether the proposed compensatory mitigation projects are feasible and will effectively offset authorized losses of aquatic resources. Since 1991, there have also been changes to the Regulatory Program's compensatory mitigation policies, such as the issuance of Regulatory Guidance Letter 02–02 on December 24, 2002. Although the Corps regulations for compensatory mitigation for losses of aquatic resources at 33 CFR part 332 were issued (see 73 FR 19594) after this proposed rule was published, the requirements for implementing that rule still support these changes to the NWP regulations.

Prior to issuing a verification letter for an NWP activity, the district engineer must review the mitigation statement or conceptual or detailed compensatory mitigation plan within 45 days of receipt of a complete PCN (see paragraph (b)(5) of NWP general condition 31 (77 FR 10287)). During this time period, the district engineer must also determine whether the proposed NWP activity, in conjunction with any proposed compensatory mitigation, will result in no more than minimal individual and cumulative adverse effects on the aquatic environment and other public interest factors. The 45-day review period provides district engineers with time to effectively review compensatory mitigation statements or proposals submitted with PCNs, or to exercise discretionary authority if the net adverse effects on the aquatic environment are determined to be more than minimal.

Despite these and other changes in the regulatory environment, NWP verification processing times are still substantially less than processing times for individual permits (see below). Amending the NWP regulations so that the PCN review period is the same as the PCN review period in the ''pre-construction notification'' general condition will not significantly impact small entities, since the 45-day PCN review period has been in effect for all the NWPs since 2000.

Two commenters said that the proposed changes will significantly affect the regulated public because of the increase in NWP processing times from 16 days in 1998 to 27 days in 2003. One commenter said that the Corps should discuss alternatives to reduce NWP processing times or reduce the need for changing the regulation.

During the period of 1998 to 2003, the processing times for all types of DA permits have increased, with NWPs showing the smallest increase. In fiscal year 2010, the average processing time for a standard permit application was 221 days and for NWP pre-construction notifications the average processing time was 32 days. We do not believe that this final rule will change the average processing times for NWP verification requests, since it reflects long-standing NWP PCN processing practices as provided in the ''pre-construction notification'' general condition. When one considers the changes in processing times that have occurred for the various types of DA permits, the NWP program still fulfills its intent of reducing delays and paperwork to authorize activities that have minimal adverse effects on the aquatic environment. Developing alternatives to the NWP program to reduce processing times, while complying with the requirements of applicable laws and regulations, such as the Endangered Species Act and the National Historic Preservation Act, is not feasible.

Two commenters stated that the proposed amendments are unnecessary, since the average review period for NWP verifications in 2003 was 27 days. One commenter disagreed that the average processing time for NWP verification requests was 27 days in 2003, and said that the processing times are usually longer than 27 days. Two commenters remarked that increasing the PCN review period from 30 days to 45 days should not alter processing times for NWP PCNs. Several commenters stated that the proposed amendment would increase processing times.

It is important to understand that the 27-day average review period cited in the proposed rule is the mean processing time for NWP PCNs and other NWP verification requests. Processing times may be longer for specific proposed activities, especially for NWP activities where consultation with other agencies is required to comply with other Federal laws, such as Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act. In those situations, the NWP authorization may be suspended until the required consultation is completed, resulting in longer processing times.

Two commenters said that if the 45-day PCN review period is adopted in the final rule, the Corps should implement expedited NWP processing procedures to offset the delays that they believe will result from that change.

As discussed above, we do not believe that this amendment to the NWP regulations will alter NWP PCN processing times. The NWPs still provide a streamlined form of authorization for certain activities that result in minimal individual and cumulative adverse effects on the aquatic environment.

Two commenters said that increasing the PCN review period to 45 days will change implementation of paragraph (a) of the ''pre-construction notification'' general condition for the NWPs. Paragraph (a) requires the district engineer to determine if a PCN is complete within 30 days of the date of receipt of the PCN, and if additional information is necessary to make the PCN complete, to request the additional information within that 30-day period. These commenters stated that changing the PCN review period in section 330.1(e)(1) would remove the 15 days between the end of the 30-day completeness review and the end of the 45-day PCN review. One commenter said that the proposed amendment would result in a 45-day completeness review for NWP PCNs.

This amendment does not affect the timing provisions of the ''pre-construction notification'' general condition, including the 30-day period for making completeness determinations for PCNs. In accordance with the current ''pre-construction notification'' general condition (general condition 31 of the 2012 NWPs), district engineers are still required to make their completeness determinations within 30 days. The 45-day clock for making a decision on a PCN still begins on the date a complete PCN is received by the district.

One commenter remarked that the proposed rule should have discussed potential effects of the amendment on program efficiency, specifically the time necessary to determine that a PCN is complete. This commenter noted that the 2001 Energy and Water Development Appropriations Act requires the Corps to track and report this information.

This amendment will have no effect on program efficiency since 45-day PCN review period has been part of the NWP program since 1996. This rule does not affect the reporting required under the

2001 Energy and Water Development Appropriations Act.

Several commenters recommended that the Corps amend the NWP regulations to include the 30-day completeness review for PCNs and allow the district engineer to make only one request for additional information to make a PCN complete.

The 30-day completeness review and the general rule regarding requests for additional information are adequately addressed through general condition 31, ''pre-construction notification,'' of the 2012 NWPs. The 2012 NWPs were promulgated as a rule, and we do not believe it is necessary to incorporate these provisions into 33 CFR part 330.

One commenter objected to the proposed amendment, and stated that the Corps should pursue available means to streamline consultations required by other Federal statutes, such as the Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fishery Management and Conservation Act cited as an example in the preamble to the proposed rule. This commenter said that the EFH regulations provide mechanisms to reduce administrative burdens on Federal agencies through programmatic consultations and general concurrences, to streamline the consultation process for classes of similar projects. These mechanisms could be used to conduct EFH consultations within the PCN review period stated in § 330.1(e)(1).

We understand that the EFH regulations provide mechanisms to streamline the consultation process and comply with the requirements of the EFH provisions of the Magnuson-Stevens Fishery Management and Conservation Act. However, the use of those streamlining mechanisms is more appropriately addressed at the regional level, between Corps district offices and NMFS regional offices. In addition, those streamlining mechanisms may not be available for all NWP activities conducted across the country, so we believe that a regulation change is an appropriate course of action for accommodating the consultation requirements of the EFH provisions, as well as other revised consultation requirements, such as those promulgated for the purposes of Section 106 of the National Historic Preservation Act. Amending the NWP regulations also provides greater clarity and predictability for the public, by reducing the number of instances where it is necessary to revoke or suspend NWP authorizations in cases where consultation with other agencies is necessary to comply with applicable laws.

In the preamble to the November 30, 2004, proposed rule, we discussed the EFH regulations as an example of additional consultation and coordination requirements that have been imposed since the NWP regulations were last amended in 1991. The EFH regulations are simply one example. Another example is Section 106 of the National Historic Preservation Act, for which new implementing regulations were promulgated in 2000 and further revised in 2004. Under the Corps Regulatory Program's April 25, 2005, and January 31, 2007, interim guidance, there is a 30-day review period for most determinations concerning effects to historic properties. In light of these examples and other requirements, we believe that amending the NWP regulations to be consistent with the 45-day pre-construction notification review period in the current NWP general condition 27 will help ensure compliance with all applicable statutes and regulations, while providing timely responses to NWP verification requests.

One commenter asked how the proposed rule would affect the process for incorporating the conditions of an individual Section 401 water quality certification that is issued after the district engineer completes the review of a PCN within the 45 day period. This commenter also requested that the final rule provide clarification on the process for incorporating the conditions of an individual water quality certification into an NWP authorization.

The amendment to section 330.4(c)(6) does not affect the provisional verification process for NWP activities that require individual water quality certification, or the process for incorporating water quality certification conditions into an NWP authorization. It only changes the PCN review period to 45 days to be consistent with the 45 day review period in the NWP ''pre-construction notification'' general condition. Regulatory Guidance Letter 92–04 provides guidance on incorporating water quality certification conditions into NWP authorizations. That guidance discusses, from the Corps perspective, what constitutes unacceptable conditions in water quality certifications and Coastal Zone Management Act consistency concurrences. Regulatory Guidance Letter 92–04 is available on the Internet at: *http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl92–04.pdf.*

Expiration Dates for Verification Letters

In the November 30, 2004, proposed rule we proposed to amend § 330.6(a)(3)(ii) to allow district engineers to issue NWP verifications that are valid until the date the NWP expires, instead of requiring verifications to expire in two years or less. An NWP verification provides confirmation that a particular activity is authorized by NWP. This amendment will help promote administrative efficiency by eliminating the two year limit for NWP verifications, so that it will not be necessary for district engineers to reverify an NWP authorization when the permittee has not completed the authorized work within two years of the issuance of the NWP verification letter.

Many commenters expressed general support for proposed amendment of § 330.6(a)(3)(ii). One commenter noted that under the proposed rule, district engineers have the discretion to issue NWP verifications for any specified time period, but generally the verification would have the same expiration date as the NWP.

We are adopting the proposed amendment in this final rule. District engineers may impose expiration dates on NWP verifications that occur earlier than the expiration date of the applicable NWPs, but they should document the reasons for shorter expiration dates. Shorter verification periods may be appropriate in cases where the authorized activity needs to be done by a specific date because of concerns for the aquatic environment or other public interest factors.

One commenter recommended that the final rule clarify that an NWP verification cannot extend past the expiration date of the NWP. This commenter said that allowing an NWP verification to be valid beyond the expiration date of an NWP conflicts with 33 CFR 330.6(b), which states that an NWP automatically expires if it is not modified or reissued within five years of its effective date. Two commenters stated that the proposed rule limits NWP verification periods to the date the NWP expires, and that district engineers could not issue verifications that are valid for a period of time after the NWP expires. Those commenters suggested that the Corps clarify the amount of discretion afforded to district engineers when establishing expiration dates for case-specific NWP verifications. Three commenters asked whether district engineers could issue NWP verifications that are valid after the expiration date of the NWP.

As discussed above, the final rule contains flexibility for district engineers to establish expiration dates for NWP verifications, but in most cases the expiration date for an NWP verification letter will be the same as the expiration

date for the applicable NWP(s). The first sentence of § 330.6(a)(3)(ii) states that an NWP verification should be valid ''generally until the expiration date of the NWP.'' The amendment of § 330.6(a)(3)(ii) does not affect § 330.6(b). Section 330.6(b) of the NWP regulations provides up to 12 months to complete an NWP activity after the NWP expires, as long as that activity has commenced or is under contract to commence by the date the NWP expires. If an NWP verification letter is to be issued near the expiration date of the applicable NWP(s), the district engineer may inform the permittee of the availability of § 330.6(b) to provide an additional 12 months to complete the authorized activity.

One commenter said that the proposed amendment conflicts with 33 CFR 330.6(b), which provides one year to complete the work authorized by an NWP, as long as the activity is under construction, or is under contract to commence construction, at the time the NWP expires, unless discretionary authority has been exercised. This commenter stated that although Section 404(e) of the Clean Water Act limits NWPs to five year authorization periods, it does not limit the amount of time to complete the work once it is authorized by NWP.

This amendment does not conflict with 33 CFR 330.6(b). The additional year to complete the authorized work in reliance on the previous NWP allows permittees time to complete activities that have begun construction, or are under contract to begin construction. All Corps permits have specific construction periods, and if the project proponent cannot complete construction within those time periods, he or she must either obtain a time extension or a new individual permit or general permit authorization. Since the NWPs cannot be issued for a period of more than five years, the Corps cannot grant time extensions for those NWP activities beyond the 12 months provided in § 330.6(b). If the previous NWP authorization expires and § 330.6(b) does not apply, the Corps will evaluate the proposed activity and determine if it qualifies for authorization under any of the new, modified, or reissued NWPs. If the proposed activity does not qualify for any of the new, modified, or reissued NWPs, then the project proponent needs to obtain an individual permit or a regional general permit authorization.

Several commenters said that the final rule should include a ''reasonable construction period'' to allow a permittee sufficient time to complete an NWP activity without obtaining a new NWP verification. These commenters referred to the ''construction period'' general condition of the 2002 NWPs, which were published in the January 15, 2002, issue of the **Federal Register** (67 FR 2020). One commenter expressed support for the proposed amendment to this section, as long as the ''construction period'' general condition is not changed. Two commenters asserted that clarification is needed in the final rule, so that there is no conflict with ''construction period'' general condition. Two commenters stated that the proposed rule would make the ''construction period'' general condition invalid. One commenter expressed concern that the proposed amendment would reduce the amount of time an NWP verification would be valid, especially in cases where the expiration date of the NWP is less than two years from the date of the verification letter. This commenter said that a permittee needs a reasonable amount of time to complete the authorized work, and suggested using the ''construction period'' general condition to address this concern.

As discussed in the March 12, 2007, **Federal Register** notice (72 FR 11171–11172), we have removed the ''construction period'' general condition from the NWPs. That general condition was removed because it is contrary to Section 404(e)(2) of the Clean Water Act, which imposes a five year limit on general permits. In light of the statutory time limit placed on general permits, NWP activities with long construction periods can be addressed in two ways.

Once an NWP expires, the permittee can utilize 33 CFR 330.6(b) to complete the work. That regulation allows permittees to continue work for 12 months in reliance on an NWP authorization, if that NWP has expired or been modified or revoked, and the activity is under construction or under contract to commence construction. If that NWP activity cannot be completed within that 12 month time period, then the permittee would have to obtain another DA authorization, which may be provided by a reissued or new NWP. We believe that 33 CFR 330.6(b) is sufficient to address concerns with projects that may not be completed before an NWP expires. For NWP activities that require substantial amounts of time to complete, project proponents should consider whether it would be more advantageous to pursue an individual permit authorization. Individual permits can have greater flexibility in construction periods. An individual permit authorization can also be extended, as long as the district engineer determines that the time extension would be consistent with applicable regulations and would not be contrary to the public interest.

This change to the NWP regulations does not reduce the amount of time an NWP verification would be valid. In cases where a reissued NWP can be used to authorize the previously verified NWP activity, the Corps could issue a new verification letter that would be valid until that NWP expires. For those activities that do not qualify for the reissued NWP, the grandfather provision at 33 CFR 330.6(b) could continue to provide the NWP authorization for up to an additional 12 months for eligible activities, unless the district engineer exercises discretionary authority to modify, suspend, or revoke the NWP authorization. Having the NWP verification letter expire at the same time as the NWP itself expires will promote compliance and help protect the aquatic environment by requiring district engineers to consider whether the proposed activity still qualifies for NWP authorization under the terms and conditions of a reissued or new NWP. The reissued or new NWP may have changed substantially during the NWP reissuance process that the Corps conducts every five years, to protect the aquatic environment or other public interest review factors.

One commenter suggested linking the expiration date of the NWP verification to the expiration date(s) of any other required Federal authorizations to reduce duplication with other Federal programs. This commenter also said that re-verification of NWP activities should not be required if they are long-term activities that are subject to comprehensive regulation through another Federal environmental statute.

We do not believe it would be appropriate to link the expiration date of NWP verifications with other Federal authorizations. Other Federal environmental statutes often do not have exactly the same requirements as the statutes administered by the Corps. Therefore, there is often a need for the Corps to do an independent review or determination to ensure compliance with the laws that apply to the Corps regulatory program. Actions or outcomes required by other Federal environmental statutes often differ from Corps requirements. In addition, Section 404(e) of the Clean Water Act limits the issuance of general permits, including NWPs, to a maximum of five years.

One commenter requested clarification on how the proposed amendment of § 330.6(a)(3)(ii) would affect situations where the NWP is revoked, modified, or expired during

the time period specified in the verification letter.

If an NWP is revoked, suspended, or modified by the Chief of Engineers before the NWP verification letter expires, 33 CFR 330.6(b) applies. In other words, the project proponent would have 12 months to complete the authorized work, as long as he or she has commenced construction, or is under contract to commence construction, before the NWP was revoked, suspended, or modified and the district engineer has not exercised discretionary authority to modify, suspend, or revoke the NWP authorization.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31855) regarding plain language, this preamble is written using plain language. The use of ''we'' in this notice refers to the Corps. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

This action will not impose any new information collection burden under the provisions of the Paperwork Production Act (44 U.S.C. 3501 et seq.). For NWPs that require PCNs, the modification changes the 30-day review period to a 45-day review period. In addition, the final rule changes the length of time an NWP verification letter could be valid. Since the final rule does not involve any additional collection of information from the public, this action is not subject to the Paperwork Reduction Act.

Executive Order 12866 and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Corps must determine whether the regulatory action is ''significant'' and therefore subject to review by OMB and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Pursuant to the terms of Executive Order 12866, we have determined that the final rule is not a ''significant regulatory action'' because it does not meet any of these four criteria. This rule consists of minor modifications of existing regulations. For NWPs that require PCNs, the final rule increases the 30-day review period to 45 days, which is consistent with the current general conditions for the NWPs. In addition, the final rule changes the length of time an NWP verification letter is generally valid.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' The phrase ''policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule does not have Federalism implications. We do not believe that amending the regulation to increase the NWP PCN review period or increase the length of time an NWP verification letter may be valid will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule does not impose new substantive requirements. In addition, the changes will not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to this rule.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Amending the NWP regulations to allow district engineers to issue NWP verification letters with expiration dates that are the same as the expiration date of the NWPs will benefit small entities who use NWPs. Implementation of this change will provide clarity, since the expiration date of the verification letter will usually match the expiration date of the NWP being used to authorize the activity. It will also eliminate uncertainty regarding whether re-verification is necessary in cases where the two-year verification letter expired before the date the NWP itself expired. The revised regulation will provide small entities with assurance that the NWP authorization is valid until the NWP expires.

Making the PCN review period in the NWP regulations consistent with the NWP ''pre-construction notification'' general condition will have no effect on small entities, since users of the NWPs must comply with all applicable terms and conditions of the NWPs, including the ''pre-construction notification'' general condition, which establishes time frames for PCN reviews.

After considering the economic impacts of this rulemaking on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. The ability for district engineers to issue NWP verification letters that have the same expiration date as the NWPs themselves will benefit small entities by providing clarity and reducing paperwork burdens. Amending the NWP regulation to have the same PCN review period as the NWP ''pre-construction notification'' general condition will also provide clarity and regulatory certainty. This final rule is consistent with current agency practice, does not impose new substantive requirements, and therefore would not

have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires the agencies 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 an 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 why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. This rule is consistent with current agency practice, does not impose new substantive requirements and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, the final rule is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that this rule contains no regulatory requirements that might significantly affect small governments. Therefore, it is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of this rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The final rule is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The phrase ''policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. It is generally consistent with current agency practice and does not impose new substantive requirements. Therefore, Executive Order 13175 does not apply to this rule.

Environmental Documentation

The Corps prepares appropriate environmental documentation, including Environmental Impact Statements when required, for all permit decisions. Therefore, environmental documentation under the National Environmental Policy Act is not required for this rule. Appropriate environmental documentation, which includes an environmental assessment, is prepared for each NWP when it is issued, reissued, or modified.

Congressional Review Act

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

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The final rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Executive Order 13211

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May

22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The final rule updates regulations for implementing the Nationwide Permit Program. The rule is consistent with current agency practice, does not impose new substantive requirements and therefore will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 33 CFR Part 330

Administrative practice and procedure, Intergovernmental relations, Navigation (water), Water pollution control, Waterways.

Dated: January 22, 2013.

Approved by:

Jo-Ellen Darcy,

Assistant Secretary of the Army (Civil Works).

For the reasons stated in the preamble, the Corps is amending 33 CFR part 330 as follows:

PART 330—NATIONWIDE PERMIT PROGRAM

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

■ 2. Amend § 330.1 by revising paragraph (e)(1) to read as follows:

§ 330.1 Purpose and policy.

* * * * *

(e) * * *

(1) In most cases, permittees may proceed with activities authorized by NWPs without notifying the DE. However, the prospective permittee should carefully review the language of the NWP to ascertain whether he must notify the DE prior to commencing the authorized activity. For NWPs requiring advance notification, such notification must be made in writing as early as possible prior to commencing the proposed activity. The permittee may presume that his project qualifies for the NWP unless he is otherwise notified by the DE within a 45-day period. The 45-day period starts on the date of receipt of the notification in the Corps district office and ends 45 calendar days later regardless of weekends or holidays. If the DE notifies the prospective permittee that the notification is incomplete, a new 45-day period will commence upon receipt of the revised notification. The prospective permittee may not proceed with the proposed activity before expiration of the 45-day period unless otherwise notified by the DE. If the DE fails to act within the 45-day period, he must use the procedures of 33 CFR 330.5 in order to modify, suspend, or revoke the NWP authorization.

* * * * *

■ 3. Amend § 330.4 by revising paragraphs (c)(6) and (d)(6) to read as follows:

§ 330.4 Conditions, limitations, and restrictions.

* * * * *

(c) * * *

(6) In instances where a state has denied the 401 water quality certification for discharges under a particular NWP, permittees must furnish the DE with an individual 401 water quality certification or a copy of the application to the state for such certification. For NWPs for which a state has denied the 401 water quality certification, the DE will determine a reasonable period of time after receipt of the request for an activity-specific 401 water quality certification (generally 60 days), upon the expiration of which the DE will presume state waiver of the certification for the individual activity covered by the NWPs. However, the DE and the state may negotiate for additional time for the 401 water quality certification, but in no event shall the period exceed one (1) year (see 33 CFR 325.2(b)(1)(ii)). Upon receipt of an individual 401 water quality certification, or if the prospective permittee demonstrates to the DE state waiver of such certification, the proposed work can be authorized under the NWP. For NWPs requiring a 45-day pre-construction notification the district engineer will immediately begin, and complete, his review prior to the state action on the individual section 401 water quality certification. If a state issues a conditioned individual 401 water quality certification for an individual activity, the DE will include those conditions as activity-specific conditions of the NWP.

* * * * *

(d) * * *

(6) In instances where a state has disagreed with the Corps consistency determination for activities under a particular NWP, permittees must furnish the DE with an individual consistency concurrence or a copy of the consistency certification provided to the state for concurrence. If a state fails to act on a permittee's consistency certification within six months after receipt by the state, concurrence will be presumed. Upon receipt of an individual consistency concurrence or upon presumed consistency, the proposed work is authorized if it complies with all terms and conditions of the NWP. For NWPs requiring a 45-day pre-construction notification the DE will immediately begin, and may complete, his review prior to the state action on the individual consistency certification. If a state indicates that individual conditions are necessary for consistency with the state's Federally-approved coastal management program for that individual activity, the DE will include those conditions as activity-specific conditions of the NWP unless he determines that such conditions do not comply with the provisions of 33 CFR 325.4. In the latter case the DE will consider the conditioned concurrence as a non-concurrence unless the permittee chooses to comply voluntarily with all the conditions in the conditioned concurrence.

* * * * *

■ 4. Amend § 330.6 by revising paragraph (a)(3)(ii) to read as follows:

§ 330.6 Authorization by nationwide permit.

(a) * * *

(3) * * *

(ii) The DE's response will state that the verification is valid for a specific period of time (generally until the expiration date of the NWP) unless the NWP authorization is modified, suspended, or revoked. The response should also include a statement that the verification will remain valid for the specified period of time, if during that time period, the NWP authorization is reissued without modification or the activity complies with any subsequent modification of the NWP authorization. Furthermore, the response should include a statement that the provisions of § 330.6(b) will apply, if during that period of time, the NWP authorization expires, or is suspended or revoked, or is modified, such that the activity would no longer comply with the terms and conditions of an NWP. Finally, the response should include any known expiration date that would occur during the specified period of time. A period of time less than the amount of time remaining until the expiration date of the NWP may be used if deemed appropriate.

* * * * *

[FR Doc. 2013–01655 Filed 1–25–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8267]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

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

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
New Hampshire:				
Berlin, City of, Coos County	330029	May 8, 1975, Emerg; June 15, 1982, Reg; February 20, 2013, Susp.	Feb. 20, 2013	Feb. 20, 2013.
Carroll, Town of, Coos County	330030	July 26, 1978, Emerg; April 15, 1986, Reg; February 20, 2013, Susp.	.....do	Do.
Colebrook, Town of, Coos County	330031	July 18, 1975, Emerg; May 17, 1989, Reg; February 20, 2013, Susp.	.....do	Do.
Columbia, Town of, Coos County	330185	May 19, 1977, Emerg; April 2, 1986, Reg; February 20, 2013, Susp.	.....do	Do.
Dalton, Town of, Coos County	330198	December 15, 1986, Emerg; December 15, 1986, Reg; February 20, 2013, Susp.	.....do	Do.
Dummer, Town of, Coos County	330201	July 20, 1993, Emerg; March 1, 1995, Reg; February 20, 2013, Susp.	.....do	Do.
Errol, Town of, Coos County	330206	August 31, 1993, Emerg; June 1, 1995, Reg; February 20, 2013, Susp.	.....do	Do.
Gorham, Town of, Coos County	330032	July 24, 1975, Emerg; April 1, 1981, Reg; February 20, 2013, Susp.	.....do	Do.
Jefferson, Town of, Coos County	330033	June 3, 1977, Emerg; April 15, 1986, Reg; February 20, 2013, Susp.	.....do	Do.
Lancaster, Town of, Coos County	335277	November 12, 1971, Emerg; April 13, 1973, Reg; February 20, 2013, Susp.	.....do	Do.
Milan, Town of, Coos County	330035	May 12, 1983, Emerg; April 2, 1986, Reg; February 20, 2013, Susp.	.....do	Do.
Northumberland, Town of, Coos County	330036	July 7, 1975, Emerg; May 4, 1989, Reg; February 20, 2013, Susp.	.....do	Do.
Shelburne, Town of, Coos County	330037	April 7, 1976, Emerg; April 2, 1986, Reg; February 20, 2013, Susp.	.....do	Do.
Stark, Town of, Coos County	330038	March 30, 1976, Emerg; April 2, 1986, Reg; February 20, 2013, Susp.	.....do	Do.
Stewartstown, Town of, Coos County	330194	February 12, 1981, Emerg; March 1, 2000, Reg; February 20, 2013, Susp.	.....do	Do.
Stratford, Town of, Coos County	330039	September 16, 1975, Emerg; April 18, 1983, Reg; February 20, 2013, Susp.	.....do	Do.
Whitefield, Town of, Coos County	330040	December 31, 1981, Emerg; April 2, 1986, Reg; February 20, 2013, Susp.	.....do	Do.
Region IV				
Alabama:				
Alabaster, City of, Shelby County	010192	December 13, 1974, Emerg; June 15, 1981, Reg; February 20, 2013, Susp.	.....do	Do.
Birmingham, City of, Jefferson and Shelby Counties.	010116	March 30, 1973, Emerg; March 16, 1981, Reg; February 20, 2013, Susp.	.....do	Do.
Calera, City of, Chilton and Shelby Counties.	010373	March 7, 1990, Emerg; May 1, 1995, Reg; February 20, 2013, Susp.	.....do	Do.
Chelsea, City of, Shelby County	010432	N/A, Emerg; July 18, 2007, Reg; February 20, 2013, Susp.	.....do	Do.
Columbiana, City of, Shelby County	010449	July 27, 2006, Emerg; September 29, 2006, Reg; February 20, 2013, Susp.	.....do	Do.
Harpersville, Town of, Shelby County	010293	N/A, Emerg; July 16, 2007, Reg; February 20, 2013, Susp.	.....do	Do.
Hoover, City of, Jefferson and Shelby Counties.	010123	April 11, 1975, Emerg; February 4, 1981, Reg; February 20, 2013, Susp.	.....do	Do.
Indian Springs Village, Town of, Shelby County.	010430	N/A, Emerg; August 10, 1999, Reg; February 20, 2013, Susp.	.....do	Do.
Montevallo, City of, Shelby County	010349	February 25, 1981, Emerg; March 16, 1981, Reg; February 20, 2013, Susp.	.....do	Do.
Shelby County, Unincorporated Areas	010191	December 15, 1986, Emerg; December 15, 1986, Reg; February 20, 2013, Susp.	.....do	Do.
Vestavia Hills, City of, Jefferson and Shelby Counties.	010132	February 21, 1975, Emerg; January 2, 1981, Reg; February 20, 2013, Susp.	.....do	Do.
Vincent, Town of, Shelby and Talladega Counties.	010292	N/A, Emerg; August 31, 1998, Reg; February 20, 2013, Susp.	.....do	Do.
Westover, Town of, Shelby County	010451	N/A, Emerg; March 25, 2008, Reg; February 20, 2013, Susp.	.....do	Do.
Wilsonville, Town of, Shelby County	010404	October 27, 1993, Emerg; March 1, 1995, Reg; February 20, 2013, Susp.	.....do	Do.
Kentucky:				
Henderson, City of, Henderson County	210109	August 7, 1973, Emerg; June 15, 1978, Reg; February 20, 2013, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Henderson County, Unincorporated Areas.	210286	N/A, Emerg; April 10, 1991, Reg; February 20, 2013, Susp.	.....do	Do.
Region VI				
Oklahoma:				
Cleveland County, Unincorporated Areas.	400475	June 8, 1987, Emerg; June 1, 1989, Reg; February 20, 2013, Susp.	.....do	Do.
Moore, City of, Cleveland County	400044	April 18, 1974, Emerg; December 2, 1980, Reg; February 20, 2013, Susp.	.....do	Do.
Noble, City of, Cleveland County	400045	October 2, 1975, Emerg; July 2, 1981, Reg; February 20, 2013, Susp.	.....do	Do.
Norman, City of, Cleveland County	400046	August 23, 1974, Emerg; November 1, 1979, Reg; February 20, 2013, Susp.	.....do	Do.
Oklahoma City, City of, Canadian, Cleveland, McClain, Oklahoma and Pottawatomie Counties.	405378	March 19, 1971, Emerg; July 14, 1972, Reg; February 20, 2013, Susp.	.....do	Do.
Region VII				
Iowa:				
Belmond, City of, Wright County	190303	February 26, 2008, Emerg; March 1, 2011, Reg; February 20, 2013, Susp.	.....do	Do.
Dows, City of, Wright County	190305	August 19, 2010, Emerg; N/A, Reg; February 20, 2013, Susp.	.....do	Do.
Eagle Grove, City of, Wright County	190928	May 26, 1998, Emerg; September 4, 2003, Reg; February 20, 2013, Susp.	.....do	Do.
Goldfield, City of, Wright County	190584	August 3, 2011, Emerg; N/A, Reg; February 20, 2013, Susp.	.....do	Do.
Region IX				
Arizona:				
Bullhead City, City of, Mohave County	040125	May 6, 1974, Emerg; March 15, 1982, Reg; February 20, 2013, Susp.	.....do	Do.
Fort Mojave Indian Tribe, Mohave County.	040133	January 31, 1992, Emerg; March 18, 1996, Reg; February 20, 2013, Susp.	.....do	Do.
Mohave County, Unincorporated Areas	040058	May 6, 1974, Emerg; March 15, 1982, Reg; February 20, 2013, Susp.	.....do	Do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 15, 2013.

David L. Miller,

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

[FR Doc. 2013–01623 Filed 1–25–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8269]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement

for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

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

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

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

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region II				
New York:				
Brewster, Village of, Putnam County	360668	March 21, 1975, Emerg; September 18, 1986, Reg; March 4, 2013, Susp.	Mar. 4, 2013	Mar. 4, 2013.
Carmel, Town of, Putnam County	360669	March 21, 1975, Emerg; June 18, 1987, Reg; March 4, 2013, Susp.	*do	Do.
Cold Spring, Village of, Putnam County	360670	August 19, 1975, Emerg; March 15, 1984, Reg; March 4, 2013, Susp.	do	Do.
Kent, Town of, Putnam County	360671	March 21, 1975, Emerg; September 4, 1986, Reg; March 4, 2013, Susp.	do	Do.
Nelsonville, Village of, Putnam County	361019	May 3, 1983, Emerg; September 10, 1984, Reg; March 4, 2013, Susp.	do	Do.
Patterson, Town of, Putnam County	361023	March 21, 1975, Emerg; July 3, 1986, Reg; March 4, 2013, Susp.	do	Do.
Philipstown, Town of, Putnam County	361026	March 21, 1975, Emerg; June 18, 1987, Reg; March 4, 2013, Susp.	do	Do.
Putnam Valley, Town of, Putnam County.	361030	July 31, 1975, Emerg; September 4, 1987, Reg; March 4, 2013, Susp.	do	Do.
Southeast, Town of, Putnam County	361041	August 12, 1975, Emerg; September 4, 1986, Reg; March 4, 2013, Susp.	do	Do.
Region IV				
Georgia:				
Berkeley Lake, City of, Gwinnett County	130450	July 15, 1975, Emerg; December 18, 1984, Reg; March 4, 2013, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Braselton, Town of, Barrow, Gwinnett and Hall Counties.	130343	August 12, 1991, Emerg; September 29, 2006, Reg; March 4, 2013, Susp.	.....do	Do.
Buford, City of, Gwinnett and Hall Counties.	130323	N/A, Emerg; May 22, 1995, Reg; March 4, 2013, Susp.	.....do	Do.
Cumming, City of, Forsyth County	130236	July 23, 1975, Emerg; August 1, 1986, Reg; March 4, 2013, Susp.	.....do	Do.
Douglas County, Unincorporated Areas	130306	January 31, 1975, Emerg; January 2, 1980, Reg; March 4, 2013, Susp.	.....do	Do.
Douglasville, City of, Douglas County ...	130305	August 22, 1979, Emerg; June 25, 1982, Reg; March 4, 2013, Susp.	.....do	Do.
Duluth, City of, Gwinnett County	130098	December 17, 1975, Emerg; June 1, 1981, Reg; March 4, 2013, Susp.	.....do	Do.
Forsyth County, Unincorporated Areas	130312	April 12, 1977, Emerg; July 4, 1989, Reg; March 4, 2013, Susp.	.....do	Do.
Gwinnett County, Unincorporated Areas	130322	April 9, 1975, Emerg; June 15, 1981, Reg; March 4, 2013, Susp.	.....do	Do.
Norcross, City of, Gwinnett County	130101	October 24, 1974, Emerg; May 1, 1980, Reg; March 4, 2013, Susp.	.....do	Do.
Sugar Hill, City of, Gwinnett County	130474	September 30, 1998, Emerg; September 29, 2006, Reg; March 4, 2013, Susp.	.....do	Do.
Suwanee, City of, Gwinnett County	130328	September 22, 1980, Emerg; June 1, 1981, Reg; March 4, 2013, Susp.	.....do	Do.
Region V				
Indiana:				
Farmland, Town of, Randolph County ..	180390	April 22, 1977, Emerg; July 3, 1985, Reg; March 4, 2013, Susp.	.....do	Do.
Parker City, Town of, Randolph County	180391	April 20, 1976, Emerg; January 3, 1985, Reg; March 4, 2013, Susp.	.....do	Do.
Randolph County, Unincorporated Areas.	180429	January 16, 1976, Emerg; May 1, 1987, Reg; March 4, 2013, Susp.	.....do	Do.
Ridgeville, Town of, Randolph County ..	180341	August 20, 1975, Emerg; July 18, 1985, Reg; March 4, 2013, Susp.	.....do	Do.
Union City, City of, Randolph County ...	180219	May 5, 1975, Emerg; September 29, 1986, Reg; March 4, 2013, Susp.	.....do	Do.
Winchester, City of, Randolph County ..	180220	March 10, 1975, Emerg; September 4, 1985, Reg; March 4, 2013, Susp.	.....do	Do.
Minnesota:				
Foreston, City of, Mille Lacs County	270287	September 16, 1975, Emerg; September 27, 1985, Reg; March 4, 2013, Susp.	.....do	Do.
Isle, City of, Mille Lacs County	270288	May 16, 1974, Emerg; November 1, 1979, Reg; March 4, 2013, Susp.	.....do	Do.
Milaca, City of, Mille Lacs County	270289	May 9, 1974, Emerg; May 5, 1981, Reg; March 4, 2013, Susp.	.....do	Do.
Mille Lacs County, Unincorporated Areas.	270624	April 15, 1974, Emerg; September 27, 1985, Reg; March 4, 2013, Susp.	.....do	Do.
Onamia, City of, Mille Lacs County	270290	November 21, 1974, Emerg; September 18, 1985, Reg; March 4, 2013, Susp.	.....do	Do.
Princeton, City of, Mille Lacs County	270292	July 2, 1974, Emerg; June 15, 1981, Reg; March 4, 2013, Susp.	.....do	Do.

* -do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 15, 2013.

David L. Miller,

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

[FR Doc. 2013–01624 Filed 1–25–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2013–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing

BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
Unincorporated Areas of Cascade County, Montana Docket No.: FEMA–B–1214				
Montana	Unincorporated Areas of Cascade County.	Missouri River (near Mid Canon).	Approximately 200 feet upstream of I–15 (westbound).	+3433
			Approximately 1.2 miles upstream of I–15 (eastbound).	+3440

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Cascade County

Maps are available for inspection at 121 4th Street North, Suites 2H–2I, Great Falls, MT 59401.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Effective Modified	Communities affected
Trigg County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1115 and B–1207			
Barnett Creek (Backwater effects from Kentucky Lake).	From the confluence with Kentucky Lake to approximately 2,324 feet upstream of the confluence with Kentucky Lake.	+375	Unincorporated Areas of Trigg County.
Beechy Fork (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.75 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Big Hurricane Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 2,185 feet upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Blockhouse Creek (Backwater effects from Kentucky Lake).	From the confluence with Kentucky Lake to approximately 1,850 feet upstream of the confluence with Kentucky Lake.	+375	Unincorporated Areas of Trigg County.
Colson Creek (Backwater effects from Kentucky Lake).	From the confluence with Kentucky Lake to approximately 1,426 feet upstream of the confluence with Kentucky Lake.	+375	Unincorporated Areas of Trigg County.
Craig Branch (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.6 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Crooked Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.8 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Cumberland River Tributary 1 (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 2,538 feet upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Donaldson Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 1.0 mile upstream of Linton Road.	+375	Unincorporated Areas of Trigg County.
Donaldson Creek Tributary 1 (Backwater effects from Lake Barkley).	From the confluence with Donaldson Creek to approximately 1,200 feet upstream of the confluence with Donaldson Creek.	+375	Unincorporated Areas of Trigg County.
Donaldson Creek Tributary 19 (Backwater effects from Lake Barkley).	From the confluence with Donaldson Creek to approximately 1,315 feet upstream of the confluence with Donaldson Creek.	+375	Unincorporated Areas of Trigg County.
Dry Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.56 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Dry Creek I (Backwater effects from Lake Barkley).	From the confluence with Muddy Fork Little River to approximately 2,430 feet upstream of the confluence with Muddy Fork Little River.	+375	Unincorporated Areas of Trigg County.
Dyers Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 2,335 feet upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Dyers Creek Tributary 1.1 (Backwater effects from Lake Barkley).	From the confluence with Dyers Creek to approximately 1,030 feet upstream of the confluence with Dyers Creek.	+375	Unincorporated Areas of Trigg County.
Elbow Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 2,715 feet upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Hopson Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.54 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Jake Fork (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 1,407 feet upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Kelly Branch (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.57 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Kentucky Lake	Entire shoreline within county	+375	Unincorporated Areas of Trigg County.
Lake Barkley	Entire shoreline within county	+375	Unincorporated Areas of Trigg County.
Laura Furnace Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.71 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Lick Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.55 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Little Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.78 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Effective Modified	Communities affected
Little Hurricane Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 2,280 feet upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Little River (Backwater effects from Lake Barkley).	Approximately 3.7 miles upstream of the Lake Barkley confluence to approximately 4.5 miles upstream of the Lake Barkley confluence.	+375	City of Cadiz, Unincorporated Areas of Trigg County.
Little River Tributary 1 (Backwater effects from Lake Barkley).	Approximately 500 feet upstream of the Little River confluence to approximately 1,678 feet upstream of the Little River confluence.	+375	City of Cadiz, Unincorporated Areas of Trigg County.
Little River Tributary 40 (Backwater effects from Lake Barkley).	From the confluence with the Little River to approximately 1,330 feet upstream of the confluence with the Little River.	+375	Unincorporated Areas of Trigg County.
Long Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.83 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Long Pond Branch (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 1,793 feet upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Muddy Fork Little River (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.8 mile upstream of Princeton Road.	+375	Unincorporated Areas of Trigg County.
North Fork Sugar Creek (Backwater effects from Kentucky Lake).	From the confluence with Kentucky Lake to approximately 0.57 mile upstream of the confluence with Kentucky Lake.	+375	Unincorporated Areas of Trigg County.
Pond Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.6 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Rhodes Creek (Backwater effects from Kentucky Lake).	From the confluence with Kentucky Lake to approximately 0.54 mile upstream of the confluence with Kentucky Lake.	+375	Unincorporated Areas of Trigg County.
Shaw Branch (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 1,740 feet upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Shelly Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 0.52 mile upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Taylor Creek (Backwater effects from Lake Barkley).	From the confluence with Lake Barkley to approximately 2,435 feet upstream of the confluence with Lake Barkley.	+375	Unincorporated Areas of Trigg County.
Turkey Creek (Backwater effects from Kentucky Lake).	From the confluence with Kentucky Lake to approximately 0.54 mile upstream of the confluence with Kentucky Lake.	+375	Unincorporated Areas of Trigg County.
Vickers Creek (Backwater effects from Kentucky Lake).	From the confluence with Kentucky Lake to approximately 2,376 feet upstream of the confluence with Kentucky Lake.	+375	Unincorporated Areas of Trigg County.
West Fork Laura Furnace Creek (Backwater effects from Lake Barkley).	From the confluence with Laura Furnace Creek to approximately 1,247 feet upstream of the confluence with Laura Furnace Creek.	+375	Unincorporated Areas of Trigg County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Cadiz

Maps are available for inspection at 63 Main Street, Cadiz, KY 42211.

Unincorporated Areas of Trigg County

Maps are available for inspection at the Trigg County Courthouse, 12 Court Street, Cadiz, KY 42211.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Bossier Parish, Louisiana, and Incorporated Areas Docket No.: FEMA–B–1196			
Flat River	Approximately 2.0 miles downstream of State Route 527	+153	City of Bossier City, Unincorporated Areas of Bossier Parish.
	Approximately 0.42 mile downstream of State Route 612 (Sligo Road).	+155	
Red Chute Bayou	At Smith Road	+153	Unincorporated Areas of Bossier Parish.
	Approximately 1,125 feet downstream of State Route 612 (Sligo Road).	+157	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bossier City
Maps are available for inspection at City Hall, 620 Benton Road, Bossier City, LA 71171.

Unincorporated Areas of Bossier Parish
Maps are available for inspection at the Bossier Parish Courthouse, 204 Burt Boulevard, Benton, LA 71006.

Carroll County, New Hampshire (All Jurisdictions) Docket No.: FEMA–B–1207			
Bay Tributary 1	At the Moultonborough Bay confluence	+506	Town of Moultonborough.
	Approximately 1.09 miles upstream of the Bay Tributary 1.1 divergence.	+547	
Bay Tributary 1.1	At the Moultonborough Bay confluence	+506	Town of Moultonborough.
	At the Bay Tributary 1 divergence	+515	
Bearcamp River	At the upstream side of Covered Bridge Road	+429	Town of Ossipee.
	Approximately 520 feet upstream of Covered Bridge Road	+431	
Bearcamp River	Approximately 2.06 miles upstream of State Route 113 (Tamworth Road).	+566	Town of Tamworth.
	Approximately 2.15 miles upstream of State Route 113 (Tamworth Road).	+570	
Berry Pond/Berry Pond Tributary 1.	Approximately 150 feet upstream of State Route 25 (Whittier Highway).	+568	Town of Moultonborough, Town of Sandwich.
	Approximately 2.6 miles upstream of State Route 25 (Whittier Highway).	+622	
Berry Pond Diversion	At the Red Hill River confluence	+536	Town of Moultonborough.
	At the Berry Pond divergence	+569	
East Branch Saco River	Approximately 160 feet upstream of U.S. Route 302B (State Route 16A).	+566	Town of Bartlett, Town of Jackson.
	Approximately 0.63 miles upstream of Town Hall Road	+836	
Halfway Brook	At the Moultonborough Bay confluence	+506	Town of Moultonborough.
	Approximately 1.29 miles upstream of Ossipee Mountain Road.	+1428	
Halfway Brook Tributary 1	At the Halfway Brook confluence	+529	Town of Moultonborough.
	Approximately 0.88 miles upstream of the Halfway Brook confluence.	+541	
Moultonborough Bay	Entire shoreline	+506	Town of Moultonborough.
Ossipee Lake	Entire shoreline	+414	Town of Effingham.
Pequawket Pond	Entire shoreline within community	+464	Town of Albany.
Province Lake	Entire shoreline	+480	Town of Effingham.
Red Hill River	At the Moultonborough Bay confluence	+506	Town of Moultonborough, Town of Sandwich.
	Approximately 1.70 miles upstream of School House Road.	+587	
Red Hill River Tributary 1	At the Red Hill River confluence	+536	Town of Moultonborough.
	Approximately 0.80 miles upstream of Sheridan Road	+878	
Red Hill River Tributary 1 Diversion.	At the Red Hill River confluence	+536	Town of Moultonborough.
	At the Red Hill River Tributary 1 divergence	+600	
Rocky Branch	Approximately 70 feet upstream of U.S. Route 302 (Crawford Notch Road).	+574	Town of Bartlett.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 520 feet upstream of U.S. Route 302 (Crawford Notch Road).	+576	
Rocky Branch	Approximately 0.47 miles upstream of U.S. Route 302 (Crawford Notch Road).	+608	Town of Bartlett.
	Approximately 0.90 miles upstream of U.S. Route 302 (Crawford Notch Road).	+656	
Saco River	Approximately 1,970 feet upstream of Maine Central Railroad.	+756	Town of Hart's Location.
	Approximately 0.85 miles upstream of Maine Central Railroad.	+772	
Shannon Brook	At the Moultonborough Bay confluence	+506	Town of Moultonborough.
	Approximately 1.07 miles upstream of State Route 171 (Old Mountain Road).	+1202	
Shannon Brook Tributary 1	At the Shannon Brook confluence	+550	Town of Moultonborough.
	Approximately 400 feet upstream of State Route 109 (Governor Wentworth Highway).	+588	
Squam Lake	Entire shoreline	+565	Town of Moultonborough, Town of Sandwich.
Weed Brook	At the Berry Pond confluence	+569	Town of Moultonborough, Town of Sandwich.
	Approximately 650 feet upstream of State Route 25 (Whittier Highway).	+701	
Weed Brook Diversion	At the Weed Brook Tributary 1 confluence	+569	Town of Moultonborough.
	At the Weed Brook divergence	+585	
Weed Brook Tributary 1	At the Weed Brook confluence	+600	Town of Moultonborough.
	Approximately 1,700 feet upstream of Bodge Hill Road	+785	
Wildcat Brook	Approximately 1,560 feet downstream of Meloon Road	+1115	Town of Jackson.
	Approximately 120 feet downstream of Meloon Road	+1176	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Albany
Maps are available for inspection at Town Hall, 1972–A State Route 16, Albany, NH 03818.

Town of Bartlett
Maps are available for inspection at Bartlett Town Hall, 56 Town Hall Road, Intervale, NH 03845.

Town of Effingham
Maps are available for inspection at the Town Hall, 68 School Street, Effingham, NH 03882.

Town of Hart's Location
Maps are available for inspection at the Town Hall, 979 U.S. Route 302, Hart's Location, NH 03812.

Town of Jackson
Maps are available for inspection at the Town Hall, 54 Main Street, Jackson, NH 03846.

Town of Moultonborough
Maps are available for inspection at the Town Hall, 6 Holland Street, Moultonborough, NH 03254.

Town of Ossipee
Maps are available for inspection at Ossipee Town Hall, 55 Main Street, Center Ossipee, NH 03814.

Town of Sandwich
Maps are available for inspection at Sandwich Town Hall, 8 Maple Street, Center Sandwich, NH 03227.

Town of Tamworth
Maps are available for inspection at theTown Hall, 84 Main Street, Tamworth, NH 03886.

Washington County, Vermont (All Jurisdictions)
Docket No.: FEMA–B–1074

Great Brook No. 1	At the confluence with Winooski River	+501	Town of Middlesex.
	Approximately 140 feet downstream of U.S. Route 2	+501	
Gunners Brook	At the downstream side of Brook Street	+596	City of Barre.
	Approximately 80 feet upstream of Brook Street	+616	
Mad River	At the confluence with Winooski River	+454	Town of Moretown.
	Approximately 950 feet upstream of confluence with Winooski River.	+454	
Mirror Lake	Entire shoreline	+1047	Town of Calais.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
North Montpelier Pond	Entire shoreline	+708	Town of Calais, Town of East Montpelier.
Stevens Branch	At the confluence with Winooski River	+544	Town of Barre, City of Barre, City of Montpelier, Town of Berlin.
	At county boundary (approximately 2.0 miles upstream of Snowbridge Road).	+740	
Sunny Brook of Winooski River	At the confluence with Winooski River	+510	Town of Middlesex.
	At downstream side of New England Central Railroad	+510	
Thatcher Brook	Approximately 225 feet upstream of Stowe Street	+502	Town of Waterbury.
	Approximately 1,100 feet upstream of Stowe Street	+503	
Union Brook	At the confluence with Dog River	+728	Village of Northfield.
	Approximately 60 feet upstream of Water Street	+728	
Winooski River	At Chittenden County Boundary (approximately 13,080 feet downstream of Bolton Falls Dam).	+342	Town of Middlesex, City of Montpelier, Town of Berlin, Town of Duxbury, Town of East Montpelier, Town of Moretown, Town of Waterbury, Village of Waterbury.
	At downstream side of Green Mountain Power No. 4 Dam	+595	

Depth in feet above ground.
+ North American Vertical Datum.
* National Geodetic Vertical Datum.

ADDRESSES

City of Barre
Maps are available for inspection at City Hall, 6 North Main Street, Barre, VT 05641.

City of Montpelier
Maps are available for inspection at the Planning, Zoning, and Community Development Department, City Hall, 39 Main Street, Montpelier, VT 05602.

Town of Barre
Maps are available for inspection at the Barre Town Clerk's Office, 149 Websterville Road, Websterville, VT 05678.

Town of Berlin
Maps are available for inspection at the Town Zoning Office, 108 Shed Road, Berlin, VT 05602.

Town of Calais
Maps are available for inspection at the Town Clerk's Office, 3120 Pekin Brook Road, East Calais, VT 05650.

Town of Duxbury
Maps are available for inspection at the Town Office, 5421 Vermont Route 100, Duxbury, VT 05676.

Town of East Montpelier
Maps are available for inspection at the Town Hall, 40 Kelton Road, East Montpelier, VT 05651.

Town of Middlesex
Maps are available for inspection at the Town Clerk's Office, 5 Church Street, Middlesex, VT 05602.

Town of Moretown
Maps are available for inspection at the Town Clerk's Office, 994 Vermont Route 100B, Moretown, VT 05660.

Town of Waterbury
Maps are available for inspection at the Waterbury Municipal Offices, 51 South Main Street, Waterbury, VT 05676.

Village of Northfield
Maps are available for inspection at the Zoning Office, 51 South Main Street, Northfield, VT 05663.

Village of Waterbury
Maps are available for inspection at the Waterbury Municipal Offices, 51 South Main Street, Waterbury, VT 05676.

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

James A. Walke,

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

[FR Doc. 2013–01625 Filed 1–25–13; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 12–473]

Practice and Procedure; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of November 16, 2011, a document amending § 1.229(b). Inadvertently, this rule was amended incorrectly. This document makes correcting amendments.

DATES: Effective January 28, 2013.

FOR FURTHER INFORMATION CONTACT: David Konczal, *David.Konczal@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC or Commission) published a document in the **Federal Register** on November 16, 2011 (76 FR 70904) deleting § 1.229(b)(2) and redesignating § 1.229(b)(3) as § 1.229(b)(2). That document inadvertently failed to account for changes to § 1.229(b) that the FCC adopted in the *Second Report and Order* in MB Docket No. 07–42 on July 29, 2011, which were subsequently published in the **Federal Register** on September 29, 2011 (76 FR 60652) and took effect after the information collection requirements were approved by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act, 77 FR 6479, February 8, 2012. This document conforms the amendments to § 1.229(b) adopted in the *Second Report and Order,* which became effective on February 8, 2012, and to the amendments to § 1.229(b) that took effect previously on November 16, 2011.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Claims, Investigations, Lawyers, Telecommunications.

Accordingly, 47 CFR part 1 is corrected by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

■ 2. Section 1.229 is amended by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 1.229 Motions to enlarge, change, or delete issues.

* * * * *

(b) * * *

(2) For program carriage complaints filed pursuant to § 76.1302 of this chapter that the Chief, Media Bureau refers to an administrative law judge for an initial decision, such motions shall be filed within 15 calendar days after the deadline for submitting written appearances pursuant to § 1.221(h), except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the **Federal Register**. (*See* § 1.223).

(3) Any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a), (b)(1), and (b)(2) of this section shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modifications of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

* * * * *

Federal Communications Commission.

William T. Lake,

Chief, Media Bureau.

[FR Doc. 2013–01425 Filed 1–25–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 51 and 69

[DA 12–1552]

Nonsubstantive, Editorial or Conforming Amendments of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document makes a number of nonsubstantive, editorial or conforming revisions to the Commission's rules. These revisions are made to delete certain rule provisions that are without current legal effect or are otherwise obsolete. They are also made to clarify, simplify, and harmonize Commission rules, making the rules more readily accessible to the public and avoiding potential confusion for interested parties and Commission staff alike. In addition to deleting balance sheet account instructions that are now obsolete, as well as references to rules that have previously been deleted, this document deletes and amends rules that refer to unbundled network elements that are no longer subject to unbundling as a result of decisions in the *Triennial Review* proceedings or expired transition periods.

DATES: Effective January 28, 2013.

FOR FURTHER INFORMATION CONTACT: Kirk Burgee, Wireline Competition Bureau, Front Office, (202) 418–1500, or send an email to *kirk.burgee@fcc.gov.*

SUPPLEMENTARY INFORMATION: In this Order, we make a number of nonsubstantive, editorial or conforming revisions to parts 32, 51 and 69 of the Commission's rules. We make these revisions to delete certain rule provisions that are without current legal effect or are otherwise obsolete. These nonsubstantive revisions are part of the Commission's ongoing examination and improvement of FCC processes and procedures. The revisions clarify, simplify, and harmonize our rules, making the rules more readily accessible to the public and avoiding potential confusion for interested parties and Commission staff alike. The revisions and the specific reasons we are adopting each one are set forth below.

I. Part 32, Subpart C, Instructions for Balance Sheet Accounts

1. This Order amends part 32, subpart C, Instructions for Balance Sheet Accounts, to delete § 32.2321, which is obsolete. Section 32.2321 creates an account in the Uniform System of Accounts for incumbent local exchange carriers' (incumbent LECs') embedded customer premises wiring that was capitalized prior to October 1, 1984. By Commission order, the full amortization of all inside wiring was to be completed by September 30, 1994 and therefore the rule has no further applicability.

II. Part 51, Subpart D, Additional Obligations of Incumbent Local Exchange Carriers

2. This Order amends rules in part 51, subpart D, Additional Obligations of Incumbent Local Exchange Carriers, which, among other things, establishes a list of unbundled network elements (UNEs) that are subject to the unbundling rules adopted in the Commission's *Triennial Review* proceedings, and the terms for unbundling these network elements. *See Triennial Review Order,* FCC 03–227, published at 68 FR 52276, 52295–305; *Unbundled Access to Network Elements; Review of the Section 251 Triennial Review Remand Order,* FCC 04–290, published at 70 FR 8940, 8953–55, February 24, 2005. Specifically, this Order makes the following deletions or amendments to part 51 rules that refer to UNEs that are no longer subject to unbundling as a result of decisions in the *Triennial Review* proceedings or expired transition periods:

• This Order deletes § 51.319(a)(1)(i), which references ''line sharing'' as a UNE that is subject to unbundling, to conform to judicial decision. *See United States Telecom Ass'n* v. *FCC,* 290 F.3d 415, 428–29 (2002) (vacating the Commission's decision to provide

CLECs with unbundled access to the high frequency portion of copper loops to provide broadband DSL services, primarily because the Commission had failed to consider the relevance of intermodal competition in the broadband market). The definition of ''high-frequency portion of the loop'' in § 51.319(a)(1)(i) has continuing relevance for the Commission's unbundling requirements, specifically with regard to line splitting under § 51.319(a)(1)(ii). Accordingly, in deleting § 51.319(a)(1)(i), this order moves the definition of ''high-frequency portion of the loop'' to the end of § 51.319(a)(1)(ii) and redesignates § 51.319(a)(1)(ii) through 51.319(a)(1)(v) as § 51.319(a)(1)(i) through 51.319(a)(1)(iv). This Order also deletes the reference to unbundled ''local circuit switching'' in § 51.319(a)(1)(ii) (redesignated as § 51.319(a)(1)(i)), to implement the *Triennial Review Remand Order,* FCC 04–290, published at 70 FR 8940, February 24, 2005.

- This Order deletes references to ''the high-frequency portion of the copper loop'' in § 51.319(a)(1)(iii) (redesignated as § 51.319(a)(1)(ii)), to conform to judicial decision. *See United States Telecom Ass'n* v. *FCC,* 290 F.3d 415, 428–29 (2002).
- This Order deletes § 51.319(a)(1)(iii)(D) & (E) to conform to judicial decision. *See United States Telecom Ass'n* v. *FCC,* 290 F.3d 415, 428–29 (2002).
- This Order amends § 51.319(a)(1)(v) (redesignated as 51.319(a)(1)(iv)) to delete the reference to ''line sharing,'' to conform to judicial decision. *See United States Telecom Ass'n* v. *FCC,* 290 F.3d 415, 428–29 (2002).
- This Order deletes a reference in § 51.319(a)(7)(ii) to network modifications that would enable a requesting telecommunications carrier to obtain access to a dark fiber loop. This deletion reflects the fact that the Commission previously eliminated the requirement to make dark fiber loops available as unbundled network elements.
- This Order deletes § 51.319(d) to conform to judicial decision, redesignates § 51.319(e) through (g) as § 51.319(d) through (f)), and amends all internal cross-references to reflect these redesignations.
- This Order deletes § 51.319(a)(4)(iii), 51.319(a)(5)(iii), 51.319(a)(6)(ii), 51.319(e)(2)(ii)(C), 51.319(e)(2)(iii)(C), and 51.319(e)(2)(iv)(B), all of which establish transition periods that have expired. In addition, this Order revises § 51.319(a)(6)(i) to designate that section as § 51.319(a)(6), and restructures 51.319(e)(2)(iv), redesignated as 51.319(d)(2)(iv), to eliminate § 51.319(e)(2)(iv)(A) as a separate section and to consolidate its text into redesignated § 51.319(d)(2)(iv).

III. Part 69, Access Charges

3. This Order amends Part 69, Access Charges, to delete references to § 54.303, Long Term Support, which the Commission deleted in the *USF/ICC Transformation Order,* FCC 11–161, published at 77 FR 26987, May 8, 2012.

4. Specifically, this Order amends § 69.415(c) to remove references to § 54.303 and ''long term support,'' deletes § 69.2(y) and § 69.502(c), which reference § 54.303, and redesignates § 69.502(d) and (e) as § 69.502(c) and (d), respectively.

5. The rule amendments adopted in this Order and set forth in the attached Appendix are nonsubstantive, editorial revisions of the rules pursuant to 47 CFR 0.231(b). These revisions delete rule provisions that are without current legal effect or are otherwise obsolete, and delete references to obsolete rules and statutes. Accordingly, we find good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. For the same reason, we also find good cause to make these nonsubstantive, editorial revisions of the rules effective upon publication in the **Federal Register**.

IV. Procedural Matters

A. Regulatory Flexibility Act

6. Because we adopt this Order without notice and comment, the Regulatory Flexibility Act does not apply.

B. Paperwork Reduction Act

7. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public. *See* Public Law 104 through 113, 44 U.S.C. 3501, *et. seq.* In addition, therefore, this Order does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002. *See* Public Law 107 through 198, 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

8. The Commission will send a copy of this Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

V. Ordering Clauses

9. Accordingly, *It is ordered that,* effective upon publication in the **Federal Register**, Parts 32, 51, and 69 of the Commission's rules *are amended,* as set forth in the attached Final Rules caption, pursuant to the authority contained in Sections 4(i), 5(c), and 303(r) of the Communications Act, 47 U.S.C. 154(i), 155(c), and 303(r), and Section 0.231(b) of the Commission's regulations, 47 CFR 0.231(b).

10. *It is further ordered* that the Secretary shall cause a copy of this Order to be published in the **Federal Register**.

List of Subjects

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

47 CFR Part 51

Communications common carriers, Telecommunications.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Julie Veach,

Chief, Wireline Competition Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 32, 51, and 69 as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 220 as amended.

§ 32.2321 [Removed]

■ 2. Remove § 32.2321.

PART 51—INTERCONNECTION

■ 3. The authority citation for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 47 U.S.C. 157 note.

■ 4. Amend § 51.319 by revising paragraph (a), by removing paragraph

(d) and redesignating paragraphs (e) through (g) as paragraphs (d) through (f) and revising newly redesignated paragraph (d) to read as follows:

§ 51.319 Specific unbundling requirements.

(a) *Local loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the local loop on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraphs (a)(1) through (8) of this section. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises. This element includes all features, functions, and capabilities of such transmission facility, including the network interface device. It also includes all electronics, optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path.

(1) *Copper loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the copper loop on an unbundled basis. A copper loop is a stand-alone local loop comprised entirely of copper wire or cable. Copper loops include two-wire and four-wire analog voice-grade copper loops, digital copper loops (*e.g.,* DS0s and integrated services digital network lines), as well as two-wire and four-wire copper loops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the copper loops are in service or held as spares. The copper loop includes attached electronics using time division multiplexing technology, but does not include packet switching capabilities as defined in paragraph (a)(2)(i) of this section. The availability of DS1 and DS3 copper loops is subject to the requirements of paragraphs (a)(4) and (5) of this section.

(i) *Line splitting.* An incumbent LEC shall provide a requesting telecommunications carrier that obtains an unbundled copper loop from the incumbent LEC with the ability to engage in line splitting arrangements with another competitive LEC using a splitter collocated at the central office where the loop terminates into a distribution frame or its equivalent. Line splitting is the process in which one competitive LEC provides narrowband voice service over the low frequency portion of a copper loop and a second competitive LEC provides digital subscriber line service over the high frequency portion of that same loop. The high frequency portion of the loop consists of the frequency range on the copper loop above the range that carries analog circuit-switched voice transmissions. This portion of the loop includes the features, functions, and capabilities of the loop that are used to establish a complete transmission path on the high frequency range between the incumbent LEC's distribution frame (or its equivalent) in its central office and the demarcation point at the end-user customer premises, and includes the high frequency portion of any inside wire owned or controlled by the incumbent LEC.

(A) An incumbent LEC's obligation, under paragraph (a)(1)(i) of this section, to provide a requesting telecommunications carrier with the ability to engage in line splitting applies regardless of whether the carrier providing voice service provides its own switching or obtains local circuit switching from the incumbent LEC.

(B) An incumbent LEC must make all necessary network modifications, including providing nondiscriminatory access to operations support systems necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements.

(ii) *Line conditioning.* The incumbent LEC shall condition a copper loop at the request of the carrier seeking access to a copper loop under paragraph (a)(1) of this section or a copper subloop under paragraph (b) of this section to ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services, whether or not the incumbent LEC offers advanced services to the end-user customer on that copper loop or copper subloop. If the incumbent LEC seeks compensation from the requesting telecommunications carrier for line conditioning, the requesting telecommunications carrier has the option of refusing, in whole or in part, to have the line conditioned; and a requesting telecommunications carrier's refusal of some or all aspects of line conditioning will not diminish any right it may have, under paragraphs (a) and (b) of this section, to access the copper loop or the copper subloop.

(A) Line conditioning is defined as the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders.

(B) Incumbent LECs shall recover the costs of line conditioning from the requesting telecommunications carrier in accordance with the Commission's forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act and in compliance with rules governing nonrecurring costs in § 51.507(e).

(C) Insofar as it is technically feasible, the incumbent LEC shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

(iii) *Maintenance, repair, and testing.* (A) An incumbent LEC shall provide, on a nondiscriminatory basis, physical loop test access points to a requesting telecommunications carrier at the splitter, through a cross-connection to the requesting telecommunications carrier's collocation space, or through a standardized interface, such as an intermediate distribution frame or a test access server, for the purpose of testing, maintaining, and repairing copper loops and copper subloops.

(B) An incumbent LEC seeking to utilize an alternative physical access methodology may request approval to do so from the state commission, but must show that the proposed alternative method is reasonable and nondiscriminatory, and will not disadvantage a requesting telecommunications carrier's ability to perform loop or service testing, maintenance, or repair.

(iv) *Control of the loop and splitter functionality.* In situations where a requesting telecommunications carrier is obtaining access to the high frequency portion of a copper loop through a line splitting arrangement, the incumbent LEC may maintain control over the loop and splitter equipment and functions, and shall provide to the requesting telecommunications carrier loop and splitter functionality that is compatible with any transmission technology that the requesting telecommunications carrier seeks to deploy using the high frequency portion of the loop, as defined in paragraph (a)(1)(i) of this section, provided that such transmission technology is presumed to be deployable pursuant to § 51.230.

(2) *Hybrid loops.* A hybrid loop is a local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

(i) *Packet switching facilities, features, functions, and capabilities.* An

incumbent LEC is not required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops. Packet switching capability is the routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the loops; and the ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.

(ii) *Broadband services.* When a requesting telecommunications carrier seeks access to a hybrid loop for the provision of broadband services, an incumbent LEC shall provide the requesting telecommunications carrier with nondiscriminatory access to the time division multiplexing features, functions, and capabilities of that hybrid loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis to establish a complete transmission path between the incumbent LEC's central office and an end user's customer premises. This access shall include access to all features, functions, and capabilities of the hybrid loop that are not used to transmit packetized information.

(iii) *Narrowband services.* When a requesting telecommunications carrier seeks access to a hybrid loop for the provision of narrowband services, the incumbent LEC may either:

(A) Provide nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology; or

(B) Provide nondiscriminatory access to a spare home-run copper loop serving that customer on an unbundled basis.

(3) *Fiber loops*—(i) *Definitions*—(A) *Fiber-to-the-home loops.* A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, serving an end user's customer premises or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the multiunit premises' minimum point of entry (MPOE).

(B) *Fiber-to-the-curb loops.* A fiber-to-the-curb loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant that is not more than 500 feet from the customer's premises or, in the case of predominantly residential MDUs, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a fiber-to-the-curb loop must connect to a copper distribution plant at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective customer's premises.

(ii) *New builds.* An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when the incumbent LEC deploys such a loop to an end user's customer premises that previously has not been served by any loop facility.

(iii) *Overbuilds.* An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when the incumbent LEC has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:

(A) The incumbent LEC must maintain the existing copper loop connected to the particular customer premises after deploying the fiber-to-the-home loop or the fiber-to-the-curb loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless the incumbent LEC retires the copper loops pursuant to paragraph (a)(3)(iv) of this section.

(B) An incumbent LEC that maintains the existing copper loops pursuant to paragraph (a)(3)(iii)(A) of this section need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to that paragraph, in which case the incumbent LEC shall restore the copper loop to serviceable condition upon request.

(C) An incumbent LEC that retires the copper loop pursuant to paragraph (a)(3)(iv) of this section shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop or fiber-to-the-curb loop on an unbundled basis.

(iv) *Retirement of copper loops or copper subloops.* Prior to retiring any copper loop or copper subloop that has been replaced with a fiber-to-the-home loop or a fiber-to-the-curb loop, an incumbent LEC must comply with:

(A) The network disclosure requirements set forth in section 251(c)(5) of the Act and in § 51.325 through § 51.335; and

(B) Any applicable state requirements.

(4) *DS1 loops.* (i) Subject to the cap described in paragraph (a)(4)(ii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS1 loop on an unbundled basis to any building not served by a wire center with at least 60,000 business lines and at least four fiber-based collocators. Once a wire center exceeds both of these thresholds, no future DS1 loop unbundling will be required in that wire center. A DS1 loop is a digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, but are not limited to, two-wire and four-wire copper loops capable of providing high-bit rate digital subscriber line services, including T1 services.

(ii) *Cap on unbundled DS1 loop circuits.* A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 loops to any single building in which DS1 loops are available as unbundled loops.

(5) *DS3 loops.* (i) Subject to the cap described in paragraph (a)(5)(ii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS3 loop on an unbundled basis to any building not served by a wire center with at least 38,000 business lines and at least four fiber-based collocators. Once a wire center exceeds both of these thresholds, no future DS3 loop unbundling will be required in that wire center. A DS3 loop is a digital local loop having a total digital signal speed of 44.736 megabytes per second.

(ii) *Cap on unbundled DS3 loop circuits.* A requesting telecommunications carrier may obtain a maximum of a single unbundled DS3 loop to any single building in which DS3 loops are available as unbundled loops.

(6) *Dark fiber loops.* An incumbent LEC is not required to provide requesting telecommunications carriers with access to a dark fiber loop on an unbundled basis. Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

(7) *Routine network modifications.* (i) An incumbent LEC shall make all routine network modifications to unbundled loop facilities used by requesting telecommunications carriers where the requested loop facility has

already been constructed. An incumbent LEC shall perform these routine network modifications to unbundled loop facilities in a nondiscriminatory fashion, without regard to whether the loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.

(8) *Engineering policies, practices, and procedures.* An incumbent LEC shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to a local loop or subloop, including the time division multiplexing-based features, functions, and capabilities of a hybrid loop, for which a requesting telecommunications carrier may obtain or has obtained access pursuant to paragraph (a) of this section.

* * * * *

(d) *Dedicated transport.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated transport on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, as set forth in paragraphs (d) through (d)(4) of this section. A ''route'' is a transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches. A route between two points (*e.g.,* wire center or switch ''A'' and wire center or switch ''Z'') may pass through one or more intermediate wire centers or switches (*e.g.,* wire center or switch ''X''). Transmission paths between identical end points (*e.g.,* wire center or switch ''A'' and wire center or switch ''Z'') are the same ''route,'' irrespective of whether they pass through the same intermediate wire centers or switches, if any.

(1) *Definition.* For purposes of this section, dedicated transport includes incumbent LEC transmission facilities between wire centers or switches owned by incumbent LECs, or between wire centers or switches owned by incumbent LECs and switches owned by requesting telecommunications carriers, including, but not limited to, DS1-, DS3-, and OCn-capacity level services, as well as dark fiber, dedicated to a particular customer or carrier.

(2) *Availability.*

(i) *Entrance facilities.* An incumbent LEC is not obligated to provide a requesting carrier with unbundled access to dedicated transport that does not connect a pair of incumbent LEC wire centers.

(ii) *Dedicated DS1 transport.* Dedicated DS1 transport shall be made available to requesting carriers on an unbundled basis as set forth in paragraphs (d)(2)(ii)(A) and (B) of this section. Dedicated DS1 transport consists of incumbent LEC interoffice transmission facilities that have a total digital signal speed of 1.544 megabytes per second and are dedicated to a particular customer or carrier.

(A) *General availability of DS1 transport.* Incumbent LECs shall unbundle DS1 transport between any pair of incumbent LEC wire centers except where, through application of tier classifications described in paragraph (d)(3) of this section, both wire centers defining the route are Tier 1 wire centers. As such, an incumbent LEC must unbundle DS1 transport if a wire center at either end of a requested route is not a Tier 1 wire center, or if neither is a Tier 1 wire center.

(B) *Cap on unbundled DS1 transport circuits.* A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis.

(iii) *Dedicated DS3 transport.* Dedicated DS3 transport shall be made available to requesting carriers on an unbundled basis as set forth in paragraphs (d)(2)(iii)(A) and(B) of this section. Dedicated DS3 transport consists of incumbent LEC interoffice transmission facilities that have a total digital signal speed of 44.736 megabytes per second and are dedicated to a particular customer or carrier.

(A) *General availability of DS3 transport.* Incumbent LECs shall unbundle DS3 transport between any pair of incumbent LEC wire centers except where, through application of tier classifications described in paragraph (d)(3) of this section, both wire centers defining the route are either Tier 1 or Tier 2 wire centers. As such, an incumbent LEC must unbundle DS3 transport if a wire center on either end of a requested route is a Tier 3 wire center.

(B) *Cap on unbundled DS3 transport circuits.* A requesting telecommunications carrier may obtain a maximum of 12 unbundled DS3 dedicated transport circuits on each route where DS3 dedicated transport is available on an unbundled basis.

(iv) *Dark fiber transport.* Dark fiber transport consists of unactivated optical interoffice transmission facilities. Incumbent LECs shall unbundle dark fiber transport between any pair of incumbent LEC wire centers except where, through application of tier classifications described in paragraph (d)(3) of this section, both wire centers defining the route are either Tier 1 or Tier 2 wire centers. An incumbent LEC must unbundle dark fiber transport if a wire center on either end of a requested route is a Tier 3 wire center.

(3) *Wire center tier structure.* For purposes of this section, incumbent LEC wire centers shall be classified into three tiers, defined as follows:

(i) Tier 1 wire centers are those incumbent LEC wire centers that contain at least four fiber-based collocators, at least 38,000 business lines, or both. Tier 1 wire centers also are those incumbent LEC tandem switching locations that have no line-side switching facilities, but nevertheless serve as a point of traffic aggregation accessible by competitive LECs. Once a wire center is determined to be a Tier 1 wire center, that wire center is not subject to later reclassification as a Tier 2 or Tier 3 wire center.

(ii) Tier 2 wire centers are those incumbent LEC wire centers that are not Tier 1 wire centers, but contain at least 3 fiber-based collocators, at least 24,000 business lines, or both. Once a wire center is determined to be a Tier 2 wire center, that wire center is not subject to later reclassification as a Tier 3 wire center.

(iii) Tier 3 wire centers are those incumbent LEC wire centers that do not meet the criteria for Tier 1 or Tier 2 wire centers.

(4) *Routine network modifications.* (i) An incumbent LEC shall make all routine network modifications to unbundled dedicated transport facilities used by requesting telecommunications carriers where the requested dedicated transport facilities have already been

constructed. An incumbent LEC shall perform all routine network modifications to unbundled dedicated transport facilities in a nondiscriminatory fashion, without regard to whether the facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; installing a repeater shelf; and deploying a new multiplexer or reconfiguring an existing multiplexer. They also include activities needed to enable a requesting telecommunications carrier to light a dark fiber transport facility. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier.

* * * * *

PART 69—ACCESS CHARGES

■ 5. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

§ 69.2 [Amended]

Remove and reserve § 69.2(y).

Amend § 69.415 by revising paragraph (c)(4) to read as follows:

§ 69.415 Reallocation of certain transport expenses.

* * * * *

(c) * * *

(4) The common line revenue requirement shall include Interstate Common Line Support as provided in § 54.901 of this chapter.

§ 69.502 [Amended]

■ 6. Amend § 69.502 by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

[FR Doc. 2013–00838 Filed 1–25–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90 and 05–337; DA 12–1777]

Data Specifications for Collecting Study Area Boundaries

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) adopts data specifications for collecting incumbent local exchange carrier (LEC) study area boundaries. The Bureau will use the maps to analyze costs of LECs and determine which LECs are eligible for support to deliver telecommunications and information services in rural and high cost areas, and to implement certain reforms to universal service support. The data will be used as an essential input in a model that determines the level of high cost support for rate of return carriers. The Bureau will also use the data to determine whether unsubsidized competitors offer service within all or a portion of an incumbent LEC's study area, and to phase out support where unsubsidized competitors offer voice and broadband service throughout an entire study area. Commission intends to allocate support among eligible LECs in a manner that best ensures that consumers in rural and high cost area have services and rates that are reasonably comparable to those in urban areas.

DATES: Effective February 27, 2013, except for the requirements contained in paragraph 16 and Appendix A of document DA 12–1777, which contain new or modified information collection requirements, and require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. These requirements shall become effective after the Commission publishes a separate document in the **Federal Register** announcing such approval and the relevant effective date(s).

FOR FURTHER INFORMATION CONTACT: Chelsea Fallon, Assistant Division Chief, at 202–418–7991, Industry Analysis & Technology Division, Wireline Competition Bureau. For additional information concerning the PRA information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's *Report and Order* (R&O) in WC Docket No. 10–90; WC Docket No. 05–337; DA 12–1777, released on November 6, 2012. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Synopsis of Report and Order

1. In this *Report and Order* (R&O), the Wireline Competition Bureau (Bureau) adopts data specifications for collecting study area boundaries for purposes of implementing various reforms adopted as part of the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011. In the *USF/ICC Transformation Order,* the Commission comprehensively reformed universal service funding for high-cost, rural areas, adopting fiscally responsible, accountable, incentive-based policies to preserve and advance voice and broadband service. As discussed below, confirming the relevant geographic boundaries is important for implementing several components of those reforms, including: the Commission's benchmarking rule and the elimination of support where an unsubsidized competitor offers voice and broadband service that overlaps an incumbent carrier's study area. On June 1, 2012, the Bureau issued the Study Area Boundaries Public Notice, 77 FR 37402, June 21, 2012, which proposed collecting study area and exchange boundary data from all incumbent LECs. Specifically, the Bureau proposed requiring all incumbent LECs to submit study area boundary data in an esri shapefile format with certain identifying feature attributes. The R&O adopts that proposal.

2. *Benchmarking Rule.* In the *USF/ICC Transformation Order,* the Commission adopted a benchmarking rule intended to moderate the expenses of rate-of-return carriers with very high costs compared to their similarly situated peers, while encouraging other rate-of-return carriers to advance broadband deployment. On April 25,

2012, the Bureau adopted the methodology for implementing this rule, which establishes limits on recovery of capital costs and operating expenses for high-cost loop support (HCLS). The methodology uses quantile regression analyses to generate a capital expense limit and an operating expense limit for each rate-of-return cost company study area. In the *HCLS Benchmarks Implementation Order,* the Bureau relied on Tele Atlas wire center boundaries as an interim source for study area boundaries. Tele Atlas is a widely-used commercial source of this information. As an interim measure to address expressed concerns that the Tele Atlas boundaries used in the benchmark methodology misstate some rate-of-return study areas, the Bureau provided a streamlined, expedited waiver process for incumbent LECs affected by the HCLS benchmarks to correct errors on an *ad hoc* basis, while obtaining public input on a proposed process to collect new nationwide data on study areas boundaries.

3. In the *USF/ICC Transformation Order,* the Commission adopted a rule to phase out universal service support where an unsubsidized competitor—or a combination of unsubsidized competitors—offers voice and broadband service throughout 100 percent of an incumbent's study area. In the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, the Commission sought comment on a process to reduce support where such an unsubsidized competitor offers voice and broadband service to a substantial majority, but not 100 percent of the study area. Study area boundaries are needed to determine whether unsubsidized competitors offer service within all or a portion of an incumbent's study area.

4. On June 1, 2012, the Bureau issued the Study Area Boundaries Public Notice which proposed collecting study area and exchange boundary data from all incumbent LECs. Specifically, the Bureau proposed requiring all incumbent LECs to submit study area boundary data in an esri shapefile format with certain identifying feature attributes. The Bureau sought comment on this proposal, along with whether to allow states to assist incumbent LECs in submitting boundary data and how to resolve any overlap issues.

Collection and Certification of Study Area Boundaries

5. *Collecting Study Area and Exchange Boundaries.* In this R&O, the Bureau requires incumbent LECs to submit esri shapefiles of their study area boundaries, with each submitted shapefile representing a single study area in each state that the incumbent LEC serves. The shapefile for each study area must depict each exchange within the study area as a closed, non-overlapping polygon. Each exchange-area polygon must constitute one record in the shapefile and must contain associated data with certain attributes used to identify the exchange, such as the exchange name and CLLI (Common Language Location Identifier) code. The Bureau will collect study area boundary data at the exchange level so that it can distinguish those exchanges that are subject to ''frozen'' support levels from those that are not, and so that the data can be updated to reflect any exchanges that have been transferred from one incumbent LEC to another.

6. *Collecting Data in ESRI Shapefile Format.* The Bureau finds that collecting study area boundary data in an esri shapefile format best balances the need for accurate and timely data with the goal of minimizing burdens on providers. A number of commenters support this approach. The use of a single data format will facilitate the creation of a complete, accurate, uniformly-formatted, publicly-available, and easily-accessible set of study area boundary data. Having all of the data submitted in a uniform format will enable us to access, analyze, and aggregate the study area boundaries using the same software program, thereby minimizing the delay and inaccuracies associated with analyzing data in inconsistent formats or converting data to a single format.

7. The Bureau finds that the esri shapefile is the best among possible data formats. Since its introduction in the 1990s, the esri shapefile has become the industry standard for storing, depicting, and analyzing spatial data. As a result, there are multiple geographic information system (GIS) platforms capable of creating and managing esri shapefiles, and multiple software programs can convert spatial data stored in other formats (such as MapInfo) to an esri shapefile format. Therefore, incumbent LECs or state entities that maintain spatial data on study area boundaries in another format should be able to convert such data to an esri shapefile format. In addition, there are many GIS specialists and engineering consultants in the United States that are able to provide expertise and develop spatial data for incumbent LECs and state entities without internal GIS resources.

8. Incumbent LECs and states entities are most familiar with the various factors—such as local geography and topography, customer locations, network configuration, and state obligations—that determine individual study area boundaries, and therefore are best suited to undertake the conversion of existing map data to an esri shapefile, because they can identify and immediately correct any errors that might occur in this conversion process. Incumbent LECs that do not already have esri shapefiles of their study area boundaries may either use software and information technology, and/or rely on the expertise of consultants, to develop a shapefile based on the presumably known locations of their physical plant and their customers. Thus, the benefits gained by requiring incumbent LECs to provide and verify esri shapefiles warrant the potential burdens imposed.

9. Incumbent LECs or other entities are not expected to conduct physical surveys in order to produce the degree of accuracy required by the data specification. Incumbent LECs reasonably can be expected to know where they offer services and thus should be able to create and submit an esri shapefile to the degree of accuracy required based largely on existing information.

10. The Bureau also rejects the argument that the boundary data collection requirements should be shifted to the state commission in cases where the incumbent LEC is unable to reasonably comply. The Bureau encourages states to assist in this endeavor, but recognizes that some state commissions may have limited resources to undertake this responsibility, particularly if there are numerous incumbent LECs within the state.

11. *State Involvement.* State entities to voluntarily submit shapefiles on behalf of any and/or all incumbent LECs within their states. State entities are well situated to assist incumbent LECs with their responsibilities under this R&O. Involvement of state entities that undertake or assist with this data collection effort could reduce the burden on incumbent LECs and on Commission staff, particularly because some states already have digitized service territory boundaries. State entities wishing to submit such data should notify the Commission in writing of their intention to do so and submit that notice to WC Docket No. 10–90 via the Commission's Electronic Comment Filing System (ECFS). The Bureau will release a Public Notice identifying the deadlines for these notices (as well as the deadlines for the shapefile submissions and incumbent LEC certifications).

12. Ultimately, however, the incumbent LECs are responsible for

reviewing, verifying, and certifying that the study area boundary data are accurate and for ensuring that the ongoing obligations, such as updating of information, are satisfied. Accordingly, in cases where a state entity uploads data to the Commission-sponsored Web site on behalf of one or more incumbent LECs, each incumbent LEC whose data are submitted by the state must log into the Web site to review the shapefile. If the incumbent LEC has a reasonable basis to conclude the shapefile is correct, the incumbent LEC can certify and submit the data using the same web interface. The reporting obligation set forth in this R&O ultimately rests with incumbent LECs; state commissions may not certify as to the accuracy of the data on behalf of incumbent LECs. If the incumbent LEC cannot certify that the data submitted by the state commission are correct, the incumbent LEC must so notify the Bureau and upload corrected data, either on its own or in conjunction with the state entity that filed it. The incumbent LEC can then certify that the study area boundary data are accurate.

13. *Incumbent LEC Certification.* After reviewing and, if necessary, correcting the study area boundary data submitted by itself or a state entity, each incumbent LEC must certify the accuracy of the data. An official of the firm, such as a corporate officer, managing partner, or sole proprietor, must provide an electronic signature certifying that he or she has examined the study area boundary shapefile and that, to the best of his or her knowledge, information, and belief, the data contained in the shapefile are accurate and correct. The certifying official may be different from the GIS specialist or other individual who developed the study area boundary shapefile, and the web interface will allow filers to enter contact information for both the certifying official and the individual most knowledgeable about the spatial data.

14. *Data Reconciliation.* Once the shapefiles have been submitted and certified, the Bureau will review the study area boundaries and resolve any voids and overlaps. Overlap areas would be those shown to be served by more than one incumbent LEC, while void areas would be those shown to be served by no incumbent LEC. The Bureau will attempt to distinguish unpopulated void areas from populated void areas that are likely to be served by some incumbent LEC, in which case an error in the submitted data may need to be resolved. The Bureau may also seek help from state commissions to resolve gaps, voids, and overlap issues. During review, if boundary overlaps or void areas are found in the submitted boundary data, the Bureau will contact the filer(s) to resolve such issues. Once these issues are resolved, the Bureau will ask incumbent LECs to recertify the new, corrected boundaries. When a complete set of the reconciled boundaries has been compiled the study area boundary data will be published.

Non-Filers

15. The Bureau will contact, either directly or via a state entity, any incumbent LEC that does not submit study area boundary data in the format requested by the required date and request that the incumbent LEC submit the required shapefiles within 30 days. The Bureau will also contact any incumbent LEC that has not certified the accuracy of the required study area data, whether filed by the incumbent LEC itself or by another party, and request that the incumbent LEC certify the data, or submit corrected data, within 30 days. Compliance with the rules adopted in this R&O is mandatory, and failure to comply may lead to enforcement action, including forfeiture penalties, pursuant to the Communications Act and other applicable law.

Mandatory Updating and Recertification of Study Area Boundaries

16. It is critical to our universal service reform implementation efforts to ensure that the boundary area data do not become out-of-date. Therefore, incumbent LECs must provide updated data when their study area boundaries change. Study area boundaries can change as the result of a transaction involving the addition or sale of exchanges; new deployment into previously-unserved areas, such as a new housing subdivision; or an incumbent LEC relinquishing its ETC designation and no longer being obligated to serve an area as a carrier of last resort. Incumbent LECs and/or state entities must submit updated data by March 15 of each year, beginning the year following the initial data submissions, showing any changes made by December 31 of the previous year. The incumbent LEC is responsible for making any necessary changes and for filing the revised shapefile. The changes cannot be made using the web interface itself; incumbent LECs will need to modify the shapefile. However, incumbent LECs can upload a revised shapefile to the same Web site used for the original filing. In addition, all incumbent LECs must recertify their study area boundary data every two years. Filers will need to examine, through the web interface described below, the boundary data previously submitted, and then either certify that they are correct or submit revised data.

Filing Procedures

17. Once OMB has completed its review of the study area boundary data collection requirements adopted today, the Bureau will issue a Public Notice providing detailed instructions and announcing the deadline for the submission of data. Each incumbent LEC or submitting state entity will need to log into the web interface, at the announced Web site URL, to upload the data. After logging in, the submitting entity will provide contact information for the individual most knowledgeable about the study area boundary data, in case questions about the submitted data arise. After completing the contact information, the incumbent LEC or state entity will upload a single zip file containing the required files per Appendix A. Once the zip file has been uploaded, the web interface will display a map of the submitted data on the filer's screen, allowing the filer to review the map and associated data for accuracy and completeness before certifying and submitting it. In cases where a state entity has uploaded data on behalf of an incumbent LEC(s), each incumbent LEC will be required to log in to the filing system separately to review and certify that the data are correct prior to submitting them. A corporate officer of an incumbent LEC will need to provide contact information and certify under penalty of perjury that he or she has examined the study area boundary shapefile and that—to the best of his or her knowledge, information, and belief—the data contained in the shapefile are accurate and correct. If the data need to be revised, the incumbent LEC or state entity will have to correct the data before the incumbent LEC certifies and submits them.

Congressional Review Act

18. The Commission will send a copy of this R&O in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

Paperwork Reduction Act

19. This R&O contains new information collection requirements subject to the PRA. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

Ordering Clauses

1. Pursuant to sections 1, 2, 4(i), 201–205, 218–220, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 218–220, 254, 303(r), and 403, and §§ 0.91, 0.201(d), 0.291, and 1.427 of the Commission's rules, 47 CFR 0.91, 0.201(d), 0.291, 1.427, and pursuant to the delegations of authority in paragraphs 157, 184, 187, 192, 217 of the *USF/ICC Transformation Order,* document DA 12–1777 *is adopted.*

2. Document DA 12–1777 *shall be effective* thirty (30) days after publication in the **Federal Register**, except for the requirements contained in paragraph 16 and Appendix A, which are subject to the PRA. These requirements include new or modified information collection requirements that require approval by OMB under the PRA, and *shall become effective* after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date(s).

3. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document DA 12–1777, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

4. The Commission *shall send* a copy of document DA 12–1777 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Julie A. Veach,

Chief, Wireline Competition Bureau.

Appendix A—Specification for Study Area Boundary Submission

1. *General.* Incumbent local exchange carriers (LECs) must submit study area and exchange boundaries. For the purposes of this collection, boundary does not refer to an architectural or engineering drawing, meets and bounds descriptions or other surveyed body of work. Boundary does refer to the general extent of the incumbent LEC's exchange which can be identified on a base map scale of 1:24,000. Boundaries must be submitted in esri compatible shapefile format such that each shapefile represents a single study area. The shapefile must contain one data record for each exchange that constitutes the study area. Each exchange should be represented as a closed, non-overlapping polygon with the associated feature attributes described below. Uploaded boundaries must be accompanied by metadata or a plain text ''readme'' file containing the information listed below. When submitting the study area boundaries, an officer of the LEC must certify under penalty of perjury that the information accurately portrays the LEC's study area to the best of his/her knowledge.

2. Since shapefiles typically consist of 3 to 9 individual files, the shapefile for the study area should be submitted as a single, zipped file containing all the component files. The shapefile and encapsulating zip file names must contain the company name and the 6-digit study area code. Shapefile templates are available at *http://transition.fcc.gov/wcb/iatd/neca.html.*

Note that submitted boundaries are public data and may be used in published FCC documents and Web pages.

3. *Shapefile.* A shapefile template is available at *http://transition.fcc.gov/wcb/iatd/neca.html.* Submitted shapefiles must:

A. Contain one closed, non-overlapping polygon for each exchange in the study area that represents the area served from that exchange.

B. Have associated with each exchange polygon the following identifying feature attributes:

1. OCN–NECA-assigned operating company number as in the LERG.
2. Company Name.
3. Exchange Name.
4. Acquired Exchange subject to § 54.305 of the Commission's rules.
5. CLLI Code(s) associated with the exchange.
6. Study Area Code.
7. State.
8. FRN (please use the FRN used for the 477 filing in the state).

C. Have an assigned projection w/ accompanying .prj file.

D. Use unprojected (geographic) WGS84 geographic coordinate system.

E. Have a minimum horizontal accuracy of +/− 40 feet or less, conforming to 1:24K national mapping standards.

F. Be submitted as a WinZip archive with a name containing the company name and study area code (*e.g.,* CompanyName_123456.zip).

4. *Cover Page Information.* In addition to the shapefile data described above, the Bureau also will collect electronically the following information:

A. Contact person name.
B. Contact person address.
C. Contact person phone number.
D. Contact person email address.
E. Date created/revised.
F. Methodology—process steps to create the data.
G. Certifying official name.
H. Certifying official address.
I. Certifying official phone number.
J. Certifying official email address.

Federal Communications Commission.

Julie A.Veach,

Chief, Wireline Competition Bureau.

[FR Doc. 2013–00840 Filed 1–25–13; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 78, No. 18
Monday, January 28, 2013

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1270; Airspace Docket No. 12–AEA–16]

Proposed Amendment of Class D and Class E Airspace; Reading, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D and Class E Airspace at Reading, PA, as the SHAPP OM has been decommissioned, requiring the modification of Standard Instrument Approach Procedures (SIAPs) at Reading Regional/Carl A. Spaatz Field. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before March 14, 2013.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2012–1270; Airspace Docket No. 12–AEA–16, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2012–1270; Airspace Docket No. 12–AEA–16) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–1270; Airspace Docket No. 12–AEA16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class D and Class E surface airspace, Class E airspace designated as an extension of Class D, and Class E airspace extending upward from 700 feet above the surface to support amended Standard Instrument Approach Procedures developed at Reading Regional/Carl A. Spaatz Field, Reading, PA. Airspace reconfiguration is necessary due to the decommissioning of the SHAPP OM navigation aid. Specifically, any references to SHAPP would be removed from the descriptor, and for continued safety and management of IFR operations at the airport.

Class D and Class E airspace designations are published in Paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

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

entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class D and Class E airspace at Reading Regional/Carl A. Spaatz Field, Reading, PA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

* * * * *

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

Paragraph 5000 Class D Airspace

AEA PA D Reading, PA [Amended]

Reading Regional/Carl A. Spaatz Field, Reading, PA
(Lat. 40°22′42″ N., long. 75°57′55″ W.)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.8-mile radius of Reading Regional/Carl A. Spaatz Field. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

AEA PA E2 Reading, PA [Amended]

Reading Regional/Carl A. Spaatz Field, Reading, PA
(Lat. 40°22′42″ N., long. 75°57′55″ W.)

That airspace extending from the surface within a 4.8-mile radius of Reading Regional/Carl A. Spaatz Field, and within 4- miles either side of the 172° bearing from the airport, extending from the 4.8-mile radius, to 10.1-miles south of the airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

AEA PA E4 Reading, PA [Amended]

Reading Regional/Carl A. Spaatz Field, Reading, PA
(Lat. 40°22′42″ N., long. 75°57′55″ W.)

That airspace extending from the surface within 4-miles either side of the 172° bearing from Reading Regional/Carl A. Spaatz Field extending from the 4.8-mile radius to 10.1 miles south of the airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Reading, PA [Amended]

Reading Regional/Carl A. Spaatz Field, Reading, PA
(Lat. 40°22′42″ N., long. 75°57′55″ W.)

That airspace extending upward from 700 feet above the surface within a 10.3-mile radius of Reading Regional/Carl A. Spaatz Field.

Issued in College Park, Georgia, on January 18, 2013.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–01719 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2012–0066]

RIN 0960–AH52

Change in Terminology: ''Mental Retardation'' to ''Intellectual Disability''

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to replace the term ''mental retardation'' with ''intellectual disability'' in our Listing of Impairments (listings) that we use to evaluate claims involving mental disorders in adults and children under titles II and XVI of the Social Security Act (Act) and in other appropriate sections of our rules. This change would reflect the widespread adoption of the term ''intellectual disability'' by Congress, government agencies, and various public and private organizations.

DATES: To ensure that your comments are considered, we must receive them no later than February 27, 2013.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2012–0066, so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2012–0066. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

The term ''intellectual disability'' is gradually replacing the term ''mental retardation'' nationwide. Advocates for individuals with intellectual disability have rightfully asserted that the term ''mental retardation'' has negative connotations, has become offensive to many people, and often results in misunderstandings about the nature of the disorder and those who have it.

In October 2010, partly in response to these concerns, Congress passed Rosa's Law, which changed references to ''mental retardation'' in specified Federal laws to ''intellectual disability,'' and references to ''a mentally retarded individual'' to ''an individual with an intellectual disability.'' [1] Rosa's Law also required the Federal agencies that administer affected laws to make conforming amendments to their regulations.

Rosa's Law did not specifically include titles II and XVI of the Act within its scope, and therefore, did not require us to make any changes to our existing regulations. However, consistent with the concerns expressed by Congress when it enacted Rosa's Law, and in response to numerous inquiries from advocate organizations, we propose to revise our rules to use the term ''intellectual disability'' in the name of our current listings and in our other regulations. In so doing, we would join other agencies that have responded to the spirit of the law, even though Rosa's Law did not require them to change their terminology.[2]

However, unlike other agencies that adopted the use of the term ''intellectual disability,'' we are bound by a legal definition of the word ''disability.'' The Act and our regulations define ''disability'' in specific terms and outline the requirements that an individual must meet in order to establish entitlement or eligibility to receive disability benefits.[3] As a result, a person who has a medically determinable intellectual impairment, including intellectual disability, is not ''under a disability'' within the meaning of the Act until we have determined that the impairment satisfies all of the statutory and regulatory requirements for establishing disability; that is, until we find that the impairment results in an inability to do any substantial gainful activity, or, in a child under title XVI, results in marked and severe functional limitations. Consequently, the use of the term ''intellectual disability'' would not mean that we will necessarily find an individual disabled within the meaning of the Act.

Under this proposed change, an individual would be able to file a claim based on having ''intellectual disability'' under our rules. We may find the individual to have a medically determinable intellectual impairment that is severe at the second step of our sequential evaluation process, but that does not meet or equal the requirements of our current listings. At the fourth and fifth steps of our sequential evaluation process, we may find that an individual with a medically determinable intellectual impairment has the residual functional capacity to perform his or her past relevant work, or has the capacity to perform a significant number of jobs in the national economy, and is therefore not ''under a disability'' as defined in the Act.

What changes are we proposing?

We propose to replace the term ''mental retardation'' with ''intellectual disability'' wherever it appears in the listings and in our other rules. The proposed changes would affect listings 12.05 and 112.05; the introductions to 10.00, the Part A adult listings, and 110.00, the Part B child listings for impairments that affect multiple body systems; the introductions to 12.00, the Part A adult listings, and 112.00, the Part B child listings for mental disorders; and sections 404.1513(a)(2) and 416.913(a)(2). We also propose to replace the words ''mentally retarded children'' with ''children with intellectual disability'' in the examples in sections 404.2045(a) and 416.645(a).

As part of our ongoing commitment to update and improve our listings, we published a Notice of Proposed Rulemaking (NPRM) on August 19, 2010, in which we proposed to revise the criteria in the listings that we use to evaluate claims involving mental disorders in adults and children under titles II and XVI of the Act.[4] We are currently considering the comments received in response to the NPRM in our revision of the mental disorders listings. The proposed language change in this rule is not in response to that NPRM. Additionally, this nomenclature change would not make any other changes to our current listings or other rules and therefore would not affect how we evaluate a claim based on ''intellectual disability.''

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We have consulted with the Office of Management and Budget (OMB) and determined that this proposed rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

While this proposed rule will not impose new public reporting burdens, it will require changes to existing OMB-approved information collections that contain the language referenced in this rule. We will make changes to the affected information collections via separate non-substantive change requests.

(Catalog of Federal Domestic Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and No. 96.006—Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

[1] Public Law 111–256.

[2] See 77 FR 29002, 77 FR 6022–01.

[3] Sections 216(i)(1) and 1614(a)(3)(B)–(C) of the Act.

[4] 75 FR 51336. We also published a notice with a limited reopening of the NPRM comment period on November 24, 2010, at 75 FR 71632.

20 CFR Part 416

Administrative practice and procedure, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: January 18, 2013.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III as follows:

PART 404—FEDERAL OLD–AGE, SURVIVORS, AND DISABILITY INSURANCE

Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189, sec 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

§ 404.1513 [Amended]

■ 2. Amend § 404.1513(a)(2) by removing the words ''mental retardation'' and adding in their place ''intellectual disability''.

Appendix 1 to Subpart P of Part 404 [Amended]

■ 3. Amend Appendix 1 to subpart P of part 404 by:

■ a. Removing the words ''mental retardation'' and adding in their place ''intellectual disability'' wherever they occur;

■ b. Removing the words ''Mental retardation'' and adding in their place ''Intellectual disability'' wherever they occur; and

■ c. Removing the words ''Mental Retardation'' and adding in their place ''Intellectual Disability'' wherever they occur.

Subpart U—Representative Payment

■ 4. The authority citation for subpart U of part 404 continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

§ 404.2045 [Amended]

■ 5. Amend the example in § 404.2045(a) by removing the words ''mentally retarded children'' and adding in their place ''children with intellectual disability''.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart F—Representative Payment

■ 6. The authority citation for subpart F of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1613(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

§ 416.645 [Amended]

■ 7. Amend the example in § 416.645(a) by removing the words ''mentally retarded children'' and adding in their place ''children with intellectual disability''.

Subpart I—Determining Disability and Blindness

■ 8. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

§ 416.913 [Amended]

■ 9. Amend § 416.913(a)(2) by removing the words ''mental retardation'' and adding in their place ''intellectual disability''.

[FR Doc. 2013–01522 Filed 1–25–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 25

[Docket No. FBI 152: AG Order No. 3362–2013]

RIN 1110–AA27

National Instant Criminal Background Check System

AGENCY: Federal Bureau of Investigation (FBI), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice (the Department) proposes three amendments to part 25 of title 28 of the Code of Federal Regulations. These proposed changes are intended to promote public safety, to enhance the efficiency of the National Instant Criminal Background Check System (NICS) operations, and to resolve difficulties created by unforeseen processing conflicts within the system. The proposed amendments are for the following purposes: to add tribal criminal justice agencies to those entities authorized to receive information in connection with the issuance of a firearm-related permit or license; to authorize access for criminal justice agencies to the FBI-maintained NICS Index to permit background checks for the purpose of disposing of firearms in the possession of those agencies; and to permit NICS to retain in a separate database its Audit Log records relating to denied transactions beyond 10 years, rather than transferring them to a Federal Records Center for storage.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before March 29, 2013. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by Docket No. FBI 152, by either of the following methods:

• *Federal Regulations Web site:* You may review this regulation on *http://www.regulations.gov* and use the comment form for this regulation to submit your comments. You must include Docket No. FBI 152 in the subject box of your message.

• *Mail:* You may use the U.S. Postal Service or other commercial delivery services to submit written comments to Section Chief Paul Wysopal, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, NICS Section, Module A3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306 or by facsimile to (304) 625–0550. To ensure proper handling, please reference Docket No. FBI 152 on your correspondence. You may view an electronic version of this proposed rule at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia Traxler, NICS Strategy and Systems Unit, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, NICS Section, Module A3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone number (304) 625–7372.

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments
II. Background
III. Regulatory Proposals
Proposal #1: Accessing Records in the System (28 CFR 25.6(j)(1))
Proposal #2: Accessing Records in the System (28 CFR 25.6(j)(3))
Proposal #3: Storage Location of NICS Audit Log records relating to denied transactions (28 CFR 25.9(b)(1)(i))
IV. Regulatory Certifications

I. Posting of Public Comments

Please note that all comments on the proposed rules are considered part of the public record and are made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file but not posted online. Confidential business information identified and located as set forth above will not be placed in the agency's public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Additional Information'' paragraph.

II. Background

The Brady Handgun Violence Prevention Act (Brady Act) of 1993, Public Law 103–159, mandated background checks pursuant to 18 U.S.C. 922(t)(1) and (3) for any firearm transfer from a federal firearms licensee (FFL) to any unlicensed person.

Access to the NICS Index for purposes unrelated to the Brady Act NICS background checks is currently limited by 28 CFR 25.6(j) to the following two purposes:

(1) Providing information to Federal, state, or local criminal justice agencies in connection with the issuance of a firearm-related or explosives-related permit or license, including permits or licenses to possess, acquire, or transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives; or

(2) Responding to an inquiry from the ATF (Bureau of Alcohol, Tobacco, Firearms, and Explosives) in connection with a civil or criminal law enforcement activity relating to the Gun Control Act (18 U.S.C. chapter 44) or the National Firearms Act (26 U.S.C. chapter 53).

III. Regulatory Proposals

The Department is publishing three proposed changes to the NICS regulations for public comment. In addition, the Department is amending the definitional provision in section 25.2 referring to ATF to reflect the transfer of that agency out of the Department of the Treasury with a new name pursuant to the Homeland Security Act of 2002 (Pub. L. 107–296).

Proposal #1: Accessing Records in the System (28 CFR 25.6(j)(1))

The first proposal would amend 28 CFR 25.6(j)(1) to add tribal criminal justice agencies to those entities authorized to receive information in connection with the issuance of a firearm-related permit or license. Under the current regulation such information may be provided only ''to Federal, state, or local criminal justice agencies.'' Tribal criminal justice agencies are part of the governing authority of ''domestic dependent nations'' recognized by the United States. The tribes have concurrent criminal jurisdiction within the borders of their respective reservations and may issue firearms-related permits and licenses. Given that state and local criminal justice agencies can access the NICS Index in the course of issuing a permit or license, tribal criminal justice agencies should also be permitted to conduct NICS background checks to support their issuance of firearms related permits and licenses.

Proposal #2: Accessing Records in the System (28 CFR 25.6(j)(3))

The second proposal would amend 28 CFR 25.6(j) to authorize access to the FBI-maintained NICS Index to permit background checks for the purpose of disposing of firearms in the possession of a criminal justice agency.

Under the current regulation, criminal justice agencies are not authorized to access the NICS in order to conduct background checks on individuals to whom they intend to transfer firearms in the agency's possession that have been recovered, confiscated, or seized. In order to ensure that the person to whom the firearm will be transferred is not prohibited from possessing a firearm, the Department proposes to amend 28 CFR 25.6(j) to authorize criminal justice agencies to access the NICS in order to conduct background checks on individuals to whom they intend to transfer possession of firearms in the agency's possession. To this end, the FBI sought and obtained the concurrence of the CJIS Division Advisory Policy Board (APB) (a body created pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2) to this proposed amendment of 28 CFR 25.6(j).

If a state is currently acting as a Point of Contact (POC) state as defined under 28 CFR 25.2, the checks for criminal justice agencies within such a state, for the purpose of returning stolen or confiscated firearms in the possession of criminal justice agencies, would also be conducted through the POC state as the firearm and firearm-related permit checks are currently conducted. If the FBI currently conducts firearm background checks for the state, such checks may be conducted through the FBI.

Proposal #3. Storage Location of NICS Audit Log Records Relating to Denied Transactions (28 CFR 25.9(b)(1)(i))

The Department is also proposing to amend 28 CFR 25.9(b)(1)(i) to authorize the NICS to retain records relating to denied transactions in a separate FBI database beyond 10 years, rather than transferring them to a Federal Records Center for storage. When the NICS was established, the Department planned for NICS records to be stored by the National Archives and Records Administration (NARA) in a Federal Records Center. In particular, the original regulation governing NICS, at 28 CFR 25.9(b)(1)(i), provided that records relating to denied transactions in the Audit Log would be transferred to a Federal Records Center after reaching ten years of age. But current technology allows NICS to readily retain such records on site, and the FBI has therefore determined that for NICS' own internal business operations, litigation and prosecution purposes, and proper administration of the system, NICS shall retain denied transaction records on site. As is currently the case, these records will be maintained in accordance with the applicable document retention requirements of NARA and the FBI. NICS business practices have changed dramatically since its inception and, with some exceptions, its business records are no longer retained in hard copy format or, in special circumstances, are retained in hard copy only for short periods of time. As soon as practicable after receipt,

NICS transfers its records to an appropriate electronic format (e.g., conversion to either pdf or tif files). These electronic formats permit the NICS to retain all of its operations records in readily accessible formats in an electronic database for the full retention period authorized by NARA and in conformance with the retention period of other CJIS Division records.

IV. Regulatory Certifications

Executive Order 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation.

The Department of Justice has determined that this proposed rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly, this rule has been reviewed by the Office of Management and Budget.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Department of Justice has assessed the costs and benefits of this rule and believes that the regulatory approach selected maximizes net benefits. The benefits of this proposed rule are enhanced access to the NICS for tribal criminal justice agencies that issue firearms-related licenses or permits. This access, while discretionary, will assist the tribes in evaluating any legal prohibitions or public safety risks associated with issuing a particular firearm permit or license. Similarly, state, tribal, and local criminal justice agencies in the possession of firearms will benefit by being able to ensure that persons to whom they transfer recovered, seized, or confiscated firearms are legally permitted to receive and possess those firearms. In both cases, such actions by criminal justice agencies will help to improve public safety by reducing the risk that firearms will be possessed and used by persons who are prohibited by law from doing so. Finally, the retention of denied transaction information at CJIS for the full period of time authorized by law will enhance the efficiency and operational capability of the NICS.

The costs of this rule stem from staffing and funding required by state agencies or the NICS Section to conduct additional background checks for the disposition of firearms in the possession of criminal justice agencies, or in connection with the issuance of firearms-related licenses or permits by tribal criminal justice agencies. The full impact of the increase in background checks resulting from these changes cannot be projected due to uncertainty about the number of firearms that currently are in, or regularly come into, the possession of criminal justice agencies, and the number of such firearms that ultimately are appropriate for transfer to an unlicensed recipient. Similarly, the FBI cannot predict how often tribal criminal justice agencies are likely to access the NICS in connection with firearms license or permit decisions. Because these uses of the NICS are discretionary with state and tribal criminal justice agencies, the FBI is unable to estimate the extent to which the states will use these capabilities and, therefore, cannot estimate either the impact on the states or the NICS. The FBI invites public comments on both the costs and benefits of this proposed rule.

Executive Order 13132—Federalism

This proposed regulation will not have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. While it provides that criminal justice agencies that are authorized users of the NICS with access to the National Crime Information Center (NCIC) will be authorized to conduct Disposition of Firearm background checks of the NICS Index, such background checks are not mandatory.

In drafting this proposed rule, the FBI consulted the FBI's CJIS Division APB, which consists of representatives from numerous federal, state, tribal, and local criminal justice agencies across the United States. It recommends general policy to the FBI Director regarding the philosophy, concept, and operational principles of the FBI's Integrated Automated Fingerprint Identification System, Law Enforcement Online, the NCIC, the NICS, Uniform Crime Reporting, and other systems and programs administered by the FBI's CJIS Division. In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Department, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this proposed regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule imposes no costs on businesses, organizations, or governmental jurisdictions (whether large or small).

Unfunded Mandates Reform Act of 1995

This rule will not 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, and it will not significantly or uniquely affect small governments. Therefore, no action was deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804). This proposed rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The collection of information contained in this notice of proposed rulemaking will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

If criminal justice agencies choose to conduct background checks through NICS for disposition of firearms in their possession, then they are required to complete a Firearms Disposition Transaction Record Form. Criminal justice agencies must also verify the identity of a person applying for the return of a firearm by examining an identification document presented by the prospective transferee. The Firearms Disposition Transaction Record Form

will include certain mandatory descriptive information as well as optional information about the prospective transferee, such as the person's Social Security number and alien registration number. The estimated average burden associated with this collection is 25 minutes per respondent or record keeper, depending on individual circumstances. The Firearms Disposition Transaction Record Form must be retained for at least five years. If the transfer of a firearm is denied or cancelled by the NICS, or for any reason the transfer is not completed (delayed or unresolved) after a NICS check is initiated, the criminal justice agency must retain the Firearms Disposition Transaction Record Form for at least five years. The estimated total annual recordkeeping burden associated with this requirement is unknown at this time due to the uncertainty of the number of firearms that are currently in the possession of criminal justice agencies. The FBI invites the public to comment on this proposed collection of information to help it

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments on the proposed information collection should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Justice and include the RIN for this proposed rule and the title of the collection. OMB encourages commenters to submit their comments via email to *oira_submissions@omb.eop.gov*, by fax to (202) 395–7285, or by physical mail to 725 17th Street NW., Room 10104, Washington, DC 20038.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Computer technology, Courts, Firearms, Law enforcement, Penalties, Privacy, Reporting and recordkeeping requirements, Security measures, Telecommunications.

Authority and Issuance

Accordingly, part 25 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: Pub. L. 103–159, 107 Stat. 1536, 49 U.S.C. 30501–30505; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

■ 2. In § 25.2, revise the definition of ''ATF'' to read as follows:

§ 25.2 Definitions.

* * * * *

ATF means the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

* * * * *

■ 3. Revise § 25.6, paragraph (j) to read as follows:

§ 25.6 Accessing records in the system.

* * * * *

(j) *Access to the NICS Index for purposes unrelated to NICS background checks required by the Brady Act.* Access to the NICS Index for purposes unrelated to NICS background checks pursuant to 18 U.S.C. 922(t) shall be limited to uses for the purposes of:

(1) Providing information to Federal, state, tribal, or local criminal justice agencies in connection with the issuance of a firearm-related or explosives-related permit or license, including permits or licenses to possess, acquire, or transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives;

(2) Responding to an inquiry from the ATF in connection with a civil or criminal law enforcement activity relating to the Gun Control Act (18 U.S.C. Chapter 44) or the National Firearms Act (26 U.S.C. Chapter 53); or,

(3) Disposing of firearms in the possession of a Federal, state, tribal, or local criminal justice agency.

■ 3. In § 25.9, revise paragraph (b)(1)(i) to read as follows:

§ 25.9 Retention and destruction of records in the system.

* * * * *

(b) * * *

(1) * * *

(i) NICS denied transaction records obtained or created in the course of the operation of the system will be retained in the Audit Log for ten years, after which time they will be transferred to an appropriate electronic database maintained by the FBI.

* * * * *

Dated: January 17, 2013.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2013–01529 Filed 1–25–13; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 326

RIN 0710–AA66

Civil Monetary Penalty Inflation Adjustment

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations to adjust its Class I civil penalties under the Clean Water Act and the National Fishing Enhancement Act to account for inflation. The adjustment of civil penalties to account for inflation is required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Since we have not made any adjustments to our Class I penalties to account for inflation since 2004, we are proposing to make a second round of penalty adjustments to account for inflation. Using the adjustment criteria provided in the statute, the Class I civil penalty under the Clean Water Act would remain at $11,000 per violation, but the maximum civil penalty would increase to $32,500. Under the National Fishing Enhancement Act, the Class I civil penalty would remain at $11,000 per violation. Increasing the maximum amount of the Class I civil penalty under the Clean Water Act to account for inflation will maintain the deterrent effects of the penalty.

DATES: Comments must be received by February 27, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or by email at *david.b.olson@usace.army.mil* or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx.*

SUPPLEMENTARY INFORMATION: This document concerns the adjustment of the Class I civil penalties under the

Clean Water Act and the National Fishing Enhancement Act to account for inflation. For further information, including instructions on how to submit comments, please see the information provided in the direct final rule that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: January 22, 2013.

Jo-Ellen Darcy,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2013–01656 Filed 1–25–13; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2012–0864; FRL–9370–5]

RIN 2070–AB27

Proposed Modification of Significant New Uses of Ethaneperoxoic Acid, 1,1-Dimethylpropyl Ester

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Toxic Substances Control Act (TSCA), EPA is proposing to amend the significant new use rule (SNUR) for the chemical substance identified as ethaneperoxoic acid, 1,1-dimethylpropyl ester, which was the subject of premanufacture notice (PMN) P–85–680. This action would amend the SNUR to allow certain uses without requiring a significant new use notice (SNUN), and would extend SNUN requirements to certain additional uses. EPA is proposing this amendment based on review of new toxicity test data.

DATES: Comments must be received on or before February 27, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0864, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *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:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2012–0864. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2012–0864. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; email address: *alwood.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substance identified as ethaneperoxoic acid, 1,1-dimethylpropyl ester (PMN P–85–680). Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of the subject chemical substance (NAICS codes 325 and 324110), e.g., chemical manufacturers and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the

disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

In the **Federal Register** of June 26, 1990 (55 FR 26102), EPA published a final SNUR (codified at § 721.1560 and redesignated as § 721.3020) for the chemical substance identified as ethaneperoxoic acid, 1,1-dimethylpropyl ester (PMN P–85–680), in accordance with the procedures at § 721.160. A SNUR requires persons who intend to manufacture, import, or process the chemical substance for an activity designated as a significant new use to notify EPA at least 90 days before commencing that activity.

EPA is proposing to amend the scope and requirements of the SNUR as detailed in this unit. Because the chemical identity of the chemical substance is no longer confidential, EPA is using the specific chemical name and CAS number to identify the chemical substance. The docket established for this proposed SNUR is available under docket ID number EPA–HQ–OPPT–2012–0864. The docket includes information considered by the Agency in developing the proposed rule and the modified TSCA section 5(e) consent order negotiated with the PMN submitter.

PMN Number P–85–680

Chemical name: Ethaneperoxoic acid, 1,1-dimethylpropyl ester.

CAS number: 690–83–5

Effective date of the TSCA section 5(e) consent order: January 30, 1986.

Federal Register *publication date and reference:* June 26, 1990 (55 FR 26111).

Basis for modification of the SNUR: The TSCA section 5(e) consent order was issued under sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(II) based on the finding that the chemical substance may present an unreasonable risk of injury to human health. To prevent any unreasonable risk the order required dermal and respiratory protection to exposed workers, establishment of a hazard communication program, limited the specific use of the PMN substance as described in the consent order, and required disposal into a waste disposal well. EPA subsequently modified the consent order to allow disposal by landfill and incineration. The proposed SNUR for this chemical substance is based on and consistent with the new data and findings discussed in the two paragraphs below. The proposed SNUR designates as a ''significant new use'' any purposeful or predictable releases of the PMN substance in concentrations that exceed 61 parts per billion (ppb) in surface waters.

Human health toxicity: EPA received a petition from a second manufacturer to revoke the SNUR based on toxicity testing on structurally analogous peroxide compounds, conducted after the SNUR was issued. Based on the new data EPA concurred with the finding that the PMN substance did not present a carcinogenicity hazard. EPA has also changed its human health findings for the TSCA new chemicals program peroxide category (*http://www.epa.gov/oppt/newchems/pubs/npcchemicalcategories.pdf*).

Ecotoxicity concerns: Based on data from ecotoxicity studies on structurally analogous peroxy esters and neutral organic chemicals, also conducted after the SNUR was issued, EPA identified potential environmental concerns if the PMN substance was released to surface waters. The second manufacturer also conducted and submitted the results of an acute algal study on the PMN substance. Based on the submitted ecotoxicity testing for algae and analogue data, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 61 ppb of the PMN substance in surface waters.

The Agency concluded, after examining the new human health toxicity information, that its finding under section 5(e)(1)(A)(ii)(I) of TSCA in the original TSCA section 5(e) consent order that certain activities involving the substance may present an unreasonable risk of injury to human health is no longer supported. The Agency also concluded based on the ecotoxicity information, that the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).

To conform with these findings, the Agency is proposing the following modifications to the SNUR:

1. Removing the significant new use requirements for protective equipment, hazard communication, and specific uses identified in the consent order.

2. Modifying significant new use requirements for environmental releases by removing notification requirements for disposal, and adding notification requirements for water releases above 61 ppb.

3. Revising the recordkeeping requirements to reflect the modified SNUR requirements.

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075) and an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.3020.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the TSCA section 5(a)(2) factors, listed in Unit III. of this document. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) and 40 CFR part 721 requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Persons who must report are described in § 721.5.

EPA may respond to SNUNs by, among other things, issuing or modifying a TSCA section 5(e) consent order and/or amending the SNUR

promulgated under TSCA section 5(a)(2). Amendment of the SNUR will often be necessary to allow persons other than the SNUN submitter to engage in the newly authorized use(s), because even after a person submits a SNUN and the review period expires, other persons still must submit a SNUN before engaging in the significant new use. Procedures and criteria for modifying or revoking SNUR requirements appear at § 721.185.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure to human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the chemical substance identified as ethaneperoxoic acid, 1,1-dimethylpropyl ester (PMN P–85–680), EPA considered relevant information about the toxicity of the chemical substance, likely human exposures and environmental releases associated with possible uses, taking into consideration the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Rationale for the Proposed Rule

During review of PMN P–85–680, the chemical substance identified as ethaneperoxoic acid, 1,1-dimethylpropyl ester, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of this chemical substance. The basis for such findings is outlined in Unit II. of this document and in the **Federal Register** document of June 26, 1990 (55 FR 26102). Based on these findings, a TSCA section 5(e) consent order requiring the use of appropriate exposure controls were negotiated with the PMN submitter. The SNUR provisions for this chemical substance are consistent with the provisions of the original TSCA section 5(e) consent order. This SNUR was promulgated pursuant to § 721.160.

After the review of new test data subsequent to issuance of the TSCA section 5(e) consent order for P–85–680 and associated SNUR (see Unit II.), and consideration of the factors included in TSCA section 5(a)(2) (see Unit III.), EPA determined that the chemical substance meets one or more of the concern criteria in § 721.170(b), but that these criteria are no longer met for the personal protective equipment, hazard communication, and specific use notification requirements. Consequently, EPA is proposing this modification to the SNUR at § 721.3020 according to procedures in §§ 721.160 and 721.185.

V. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. EPA solicits comments on whether any of the uses proposed as significant new uses are ongoing. As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication of the proposed rule, rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule.

Thus, any persons who begin commercial manufacture, import, or processing activities with the chemical substances that are not currently a significant new use under the current rule but which would be regulated as a ''significant new use'' if this proposed rule is finalized, must cease any such activity as of the effective date of the rule if and when finalized. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities.

VI. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require the development of any particular test data before submission of a SNUN. There are two exceptions:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).
2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In this case, EPA recommends persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the Harmonized Test Guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

The modified TSCA section 5(e) consent order for the chemical substance that would be regulated under this proposed rule does not require submission of the test at any specified time or volume. However, the restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN substance would remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information. These restricted activities cannot be commenced unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by this chemical substance. The test specified in the modified TSCA section 5(e) consent order is included in Unit II. The proposed SNUR would contain the same restrictions as the modified TSCA section 5(e) consent order. Persons who intend to commence non-exempt commercial manufacture, import, or processing for those activities proposed as significant new uses would be required to notify the Agency by submitting a SNUN at least 90 days in advance of commencement of those activities.

The recommended testing specified in Unit II. of this document may not be the

only means of addressing the potential risks of the chemical substance. However, SNUNs submitted without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substance.
- Potential benefits of the chemical substance.
- Information on risks posed by the chemical substance compared to risks posed by potential substitutes.

VII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in §§ 721.25 and 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

VIII. Economic Analysis

EPA evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances during the development of the direct final rule. The Agency's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2012–0864.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866

This proposed rule would modify a SNUR for a chemical substance that is the subject of a PMN and TSCA section 5(e) consent order. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA has amended the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this proposed rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

On February 18, 2012, EPA certified pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
2. The SNUN submitted by any small entity would not cost significantly more than $8,300.

A copy of that certification is available in the docket for this proposed rule.

This proposed rule is within the scope of the February 18, 2012 certification. Based on the economic analysis discussed in Unit VIII. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300. Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal government would be impacted by this proposed rule. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

E. Executive Order 13132

This action would not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly nor uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR

67249, November 9, 2000), do not apply to this proposed rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 15, 2013.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Amend § 721.3020 as follows:

■ a. Revise the section heading.

■ b. Revise paragraphs (a)(1), (a)(2)(i), and (a)(2)(ii).

■ c. Remove paragraphs (a)(2)(iii) and (a)(2)(iv).

■ d. Revise paragraph (b)(1).

■ e. Remove paragraph (b)(3).

The revisions read as follows:

§ 721.3020 Ethaneperoxoic acid, 1,1-dimethylpropyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethaneperoxoic acid, 1,1-dimethylpropyl ester (PMN P–85–680; CAS No. 690–83–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=61).

(ii) [Reserved]

(b) * * *

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

[FR Doc. 2013–01589 Filed 1–25–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90 and 05–337; DA 12–1561, 12–1687, 12–2011, 12–2029, 13–70]

Wireline Competition Bureau Releases Connect America Phase II Cost Model Virtual Workshop Discussion Topics

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireline Competition Bureau releases for discussion a number of virtual workshop topics related to the development and adoption of the forward-looking cost model for Connect America Phase II.

DATES: Comments are due on or before February 27, 2013 and reply comments are due on or before March 14, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 10–90 and 05–337, by any of the following methods:

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

▪ *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

▪ *Virtual Workshop:* In addition to the usual methods for filing electronic comments, the Commission is allowing comments, reply comments, and ex parte comments in this proceeding to be filed by posting comments at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.*

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Katie King, Wireline Competition Bureau at (202) 418–7491 or TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notices in WC Docket Nos. 10–90, 05–337; DA 12–1561, 12–1687, 12–2011, 12–2029, 13–70 released October 9, 2012, October 19, 2012, December 11, 2012, December 17, 2012, and January 17, 2013 as well as information posted online in the Wireline Competition Bureau's Virtual Workshop. The complete text of the Public Notices is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. These documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* In addition, the Virtual Workshop may be accessed via the Internet at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.*

I. Introduction

1. On November 18, 2011, the Federal Communications Commission (Commission) released the *USF/ICC Transformation Order,* 76 FR 73829, November 29, 2011, adopting a framework for providing ongoing support to areas served by price cap

carriers, including areas where broadband service is not currently provided, known as Connect America Phase II. The Commission delegated authority to provide this ongoing support through a combination of a forward-looking cost model and competitive bidding to the Wireline Competition Bureau (Bureau).

2. On December 15, 2011, the Bureau released the *Request for Models PN,* 76 FR 80941, December 27, 2011, inviting interested parties to submit proposed forward-looking cost models. In response, parties submitted two models into the record, and thereafter, on June 8, 2012, the Bureau released the *Model Design PN,* 77 FR 38804, June 29, 2012, seeking comment on certain model design and input issues. The Bureau also held an in-person workshop to discuss the two models on September 13 and 14, 2012.

3. To provide additional opportunities for all affected stakeholders and interested parties to provide input on additional model design and input issues, on September 12, 2012, the Bureau announced that it would encourage and facilitate public participation on the characteristics of a model that will best fulfill the objectives established by the Commission via an ongoing ''virtual workshop.''

II. Discussion

4. The Bureau commenced the Connect America Cost Model Virtual Workshop on October 9, 2012, and has begun soliciting input on a number of topics that the Bureau will consider—in addition to the topics previously raised in the *Model Design PN*—in developing and adopting the forward-looking cost model for Connect America Phase II. The virtual workshop may be accessed via the Internet at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.*

5. On December 11, 2012, the Bureau announced the release of the first version of the Connect America Cost Model and solicited input in the virtual workshop as to whether any other functionalities or capabilities should be added to the Connect America Cost Model platform.

6. On December 17, 2012, the Bureau announced it was soliciting public input on two newly added virtual workshop discussion topics: calculating average per-unit costs/take rate; and assigning shared costs.

7. In addition, the Bureau asked the public to provide input on topics on which it previously sought comment in light of the release of version one of the Connect America Cost Model: determining customer locations; clustering; routing; capturing variation by geography; inter-office transport cost; voice capability; wire center facilities; sizing of network facilities; the use of company-specific values; calculating opex; determining the annualized cost of capital investments; determining the sharing factor for outside plant; plant mix; labor-cost adjustment based on location. In particular, commenters are invited to address the questions previously posed, focusing specifically on the choices made in both version one and version two of the Connect America Cost Model.

8. Parties wishing to participate in the virtual workshop may do so by visiting *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012* and posting their comments by the deadlines indicated above. Parties also may choose to address any issue raised in the virtual workshop by filing comments through traditional channels at the FCC, such as the Commission's Electronic Comment Filing System (ECFS). The Bureau anticipates adding additional discussion topics as the virtual workshop progresses. All future topics for the virtual workshop will be announced by Public Notice and published in the **Federal Register**.

9. The Bureau will not rely on anonymous comments posted during the workshop in reaching decisions regarding the model. Participants should be aware that identifying information from parties that post material in the virtual workshop will be publicly available for inspection upon request, even though such information may not be posted in the workshop forums.

10. At the close of the Virtual Workshop, comments from the Virtual Workshop will be included in the official public record of this proceeding, along with comments filed through traditional channels at the FCC, such as the Commision's Electronic Comment Filing System (ECFS). In the meantime, parties are encouraged to examine both the Virtual Workshop and the official public record of this proceeding in order to be aware full range of discussion occurring in this proceeding, including discussion on the characteristics of and inputs to the CACM.

III. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Bureau prepared an Initial Regulatory Flexibility Analysis (IRFA), included as part of the *Model Design PN,* 77 FR 38804, June 29, 2012, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in these Public Notices and the information posted online in the Virtual Workshops. We have reviewed the IRFA and have determined that is does not need to be supplemented.

B. Filing Requirements

12. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

13. *Virtual Workshop.* In addition to the usual methods for filing electronic comments, the Commission is allowing comments in this proceeding to be filed by posting comments at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.* Persons wishing to examine the record in this proceeding

are encouraged to examine the record on ECFS and the Virtual Workshop. Although Virtual Workshop commenters may choose to provide identifying information or may comment anonymously, anonymous comments will not be part of the record in this proceeding and accordingly will not be relied on by the Commission in reaching its conclusions in this rulemaking. The Commission will not rely on anonymous postings in reaching conclusions in this matter because of the difficulty in verifying the accuracy of information in anonymous postings. Should posters provide identifying information, they should be aware that although such information will not be posted on the blog, it will be publicly available for inspection upon request.

14. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

15. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

Federal Communications Commission.

Trent B. Harkrader,

Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2013–01597 Filed 1–25–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 234, 235, and 236

[Docket No. FRA–2011–0061, Notice No. 2]

RIN 2130–AC32

Positive Train Control Systems (RRR)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Clarification of NPRM and extension of comment period.

SUMMARY: In response to a petition for rulemaking, FRA proposed, in a notice of proposed rulemaking (NPRM) dated December 11, 2012, amendments to regulations implementing a requirement of the Rail Safety Improvement Act of 2008 that certain passenger and freight railroads install positive train control (PTC) systems. The present document clarifies FRA's responses to several elements of the Association of American Railroads' (AAR) petition for rulemaking and which elements of the petition for rulemaking FRA is considering, and asks specific questions concerning those elements. This document does not alter FRA's proposal as issued December 11, 2012, but it does extend the comment period in this proceeding to March 11, 2013.

DATES: Written comments must be received by March 11, 2013. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

ADDRESSES: Comments: Comments related to Docket No. FRA–2011–0061 may be submitted by any of the following methods:

- *Web Site:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

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 level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ronald Hynes, Director, Office of Safety Assurance and Compliance, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W35–302, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6404); or Matthew T. Prince, Trial Attorney, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 7th Floor, Room W75–208, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6146).

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Purpose and Background
II. Questions Concerning Proposals in the Petition Not Adopted in the December 11, 2012 NPRM
A. *De Minimis* Exception
B. Yard Movement Exceptions
C. Provision on En Route Failures

I. Purpose and Background

FRA is issuing this document to clarify and seek additional information related to its proposed rule published at 77 FR 73589 on December 11, 2012, which was intended to provide additional regulatory guidance and flexibility related to the implementation of PTC systems by railroads as mandated by the Rail Safety Improvement Act of 2008, Sec. 104, Div.A, Public Law 110–432, 122 Stat. 4854 (Oct. 16, 2008) (codified at 49 U.S.C. 20157) (hereinafter ''RSIA''). This document also extends the comment period in this proceeding to March 11, 2013, in order to provide interested parties sufficient time in which to develop responses.

RSIA was signed into law on October 16, 2008, mandating PTC system implementation by December 31, 2015. To effectuate this goal, RSIA required the railroads to submit for FRA approval a PTC Implementation Plan (PTCIP) within 18 months (i.e., by April 16, 2010). On July 27, 2009, FRA published an NPRM regarding the mandatory implementation and operation of PTC systems in accordance with RSIA. During the comment period for that proceeding, CSX Transportation, Inc. (CSX) suggested that FRA create a *de minimis* exception to the requirement that lines carrying materials poisonous by inhalation (PIH materials) traffic be equipped with PTC systems.

The final rule, published on January 15, 2010, included a *de minimis* exception, because FRA believed that the exception had significant merit and that it fell within the scope of the issues set forth in the proposed rule. However, because none of the parties had had an

opportunity to comment on this specific exception as provided in the final rule, FRA sought further comments on the extent of the *de minimis* exception. The further comments responsive to this issue were largely favorable, although the AAR sought some additional expansion and clarification. In publishing its second PTC final rule on September 27, 2010, based on the comments submitted, FRA decided not to further amend the *de minimis* exception.

In a petition for rulemaking dated April 22, 2011 (Petition), AAR requested that FRA initiate a rulemaking to propose expanding the *de minimis* exception and otherwise amend the rules concerning the ''limited operations'' exception, en route failures of trains operating with PTC systems, and the discontinuance of signal systems once PTC systems are installed. AAR also requested that FRA develop a new exception for allowing unequipped trains to operate on PTC lines during certain yard operations, create a new ''limited operations'' exception for freight movements, modify the default procedures for handling the en route failure of PTC systems, and allow automatic approval of the discontinuance of signal systems where PTC systems are implemented. In response to the Petition, FRA's December 11, 2012 NPRM proposed to make many of the amendments requested in the Petition and requested additional comment on the others.

II. Questions Concerning Proposals in the Petition Not Adopted in the December 11, 2012 NPRM

To fully develop the record, FRA seeks additional information from all parties on the issues raised in the Petition. FRA also continues to seek comment on all of the proposals in the NPRM, even those not addressed in this document. This document further serves to clarify the input FRA requests on specific items in the Petition and other matters. FRA views all elements of the Petition as within the scope of this rulemaking and seeks comment on each of the elements contained in the Petition. The Petition can be found in the public docket related to this proceeding, FRA–2011–0061, which can be accessed by following the directions contained in the **ADDRESSES** section of this document. Nothing in the NPRM has foreclosed FRA's further consideration of any issues or approaches related to this rulemaking that may be submitted in public comments.

As a general note, when commenters are addressing specific provisions of the NPRM, and when suggesting specific changes, FRA seeks information, to the extent feasible and practicable, on the number of additional miles and/or locomotives that would or would not require PTC component installation (e.g., wayside components, onboard components). For example, if a commenter suggests a change to a *de minimis* exception alternative by recommending the use of a speed restriction instead of track class criteria, FRA is interested in the number of track miles that would no longer require PTC installation. FRA also seeks any information on the potential costs associated with any increased accident risk from not installing PTC. This type of information would help FRA evaluate the benefits and costs for each potential change to the PTC rule as well as the NPRM as a whole. Pursuant to Executive Order 13563 and to the extent permitted by law, FRA seeks information sufficient to make a reasoned determination that benefits justify costs and therefore requests comment on the magnitude of specific proposed rule changes.

A. De Minimis Exception

FRA seeks comment on several aspects of the categorical *de minimis* exception. The Petition proposed modifying the categorical exception to apply only to 100 loaded PIH cars, and not to residue cars. AAR notes that the Transportation Security Administration does not deem it necessary to regulate residue cars for security purposes since consequences of the release of a residue quantity of PIH materials would be significantly less than the consequences of an incident involving a loaded PIH car. In the NPRM, FRA proposes limiting the categorical *de minimis* exception to lines with fewer than 200 cars containing PIH materials (including both loaded and residue cars) per year. For the reasons stated in the NPRM, FRA did not propose a wholesale elimination of the applicability of the yearly cap on number of cars to residue cars. Nonetheless, FRA seeks comments on that decision and whether the car cap should apply only to loaded PIH cars and at what level.

FRA also seeks comment on the proposal to modify the *de minimis* exception to include a two-trains-per-day limitation on trains carrying PIH materials. Specifically, FRA seeks comment on the constraints proposed on the two-train limitation in the NPRM (e.g., annual carload limit, inclusion of residue cars) and whether different, or any, constraints on a train-per-day limitation would be appropriate. FRA seeks comment on the relationship between daily train limitations and safety and the relationship between a daily train limitation and the annual car limitation particularly with respect to different PIH materials. For example, if the transit time for a tank car carrying anhydrous hydrogen chloride is too long, there is a risk that the car will become over-pressurized and that locations where such tank cars are held need to have the capability to vent the cars. FRA also seeks comment on the types of track segments that might not qualify for the categorical *de minimis* exception solely due to the trains-per-day limitation as well as operational changes that might be necessary to comply with the daily train limitation on track segments that would otherwise qualify for the *de minimis* exception (i.e., track segments carrying less than 200 PIH material cars per year, but more than two trains daily carrying PIH materials).

The categorical *de minimis* exception also includes two criteria meant to establish that a line qualifies as a ''low density track segment,'' as discussed in 49 CFR 236.1005(b)(iii): (1) That the line segment is Class 1 or Class 2 track; and (2) that the line density is less than 15 million gross tons (MGT) per year. With respect to the track class criterion, FRA seeks comment on the impact of the track class criterion on track maintenance standards; specifically, on whether the track class criterion creates a disincentive to setting higher maintenance standards for excluded track segments. FRA also seeks comment on whether the categorical *de minimis* exception should be extended to include Class 3 track segments. Alternatively, FRA seeks comment on the concept of eliminating the track class criteria and using a speed restriction on trains carrying PIH materials, and, if so, what that speed limit should be. FRA notes that in 2009, the Pipeline and Hazardous Materials Safety Administration (PHMSA) of DOT issued enhanced tank car design standards for new construction of railroad tank cars designed to transport PIH materials. The new design standards are intended to enhance the accident survivability of tank cars transporting PIH materials. 74 FR 1770 (January 13, 2009). Commenters should address the impact on the speed limit issue of the replacement of the historical tank car fleet with newer, more robust tank cars meeting the enhanced standards of PHMSA's rule. Commenters should address both the probability and severity of a potential accident when accounting for the costs of a potential change in track class

criteria or use of a speed restriction. With respect to the tonnage limitation, FRA seeks comment on whether 15 MGT is the appropriate threshold, taking into account both derailment rates and the severity of derailments by traffic density, for the categorical *de minimis* exemption. FRA also seeks comment on AAR's suggestion that the 15 MGT limit be eliminated from the categorical *de minimis* exception and potential alternative standards for the categorical *de minimis* exception.

The categorical *de minimis* exception also contains a 1-percent grade restriction. The Petition suggests that the exception be restricted to grades that are not ''heavy grade'' as defined in 49 CFR part 232. Section 232.407 of title 49 CFR defines ''heavy grade'' as an average grade of at least 2 percent over two continuous miles in the case of a train operating with no more than 4,000 trailing tons, and as an average grade of at least 1 percent over three continuous miles in the case of a train operating with more than 4,000 trailing tons. After noting the difficulty of applying these criteria to track segments independent of specific train movements, FRA proposed in the NPRM a grade restriction of 1 percent for three continuous miles. FRA indicated that a railroad may seek relief under the general *de minimis* exception for train operations with 4,000 trailing tons or less over track with an average grade of two percent or less over a distance of two miles. FRA seeks information on operational impacts associated with grade limitations proposed in the NPRM and the Petition, and seeks information on both the probability of a potential accident and the severity of a potential accident associated with both grade limitations. FRA also seeks specific information regarding the track miles that would be excluded from the exception should either grade limitation be adopted.

In the existing regulations, the categorical *de minimis* exception also requires that PIH materials be transported in trains that are temporally separated from other trains, as the term is discussed in 49 CFR part 211, appendix A. In the Petition, AAR suggested that FRA replace this requirement with a requirement that trains carrying PIH materials be operated with an absolute block ahead of and behind the train. FRA indicated in the NPRM that it is considering this block-separation proposal, though it would not be accurate to refer to it as ''temporal separation.'' FRA requests comment on whether the block-separation proposal would be an adequate alternative to temporal separation in providing adequate protection for the remaining PIH materials trains on a PTC-excluded track segment. FRA also seeks comment on any other techniques (implementation of technology, methods of operation, etc.) that could be used in place of temporal separation to establish separation between trains and ensure the safety of trains carrying PIH materials on PTC-excluded track segments.

Under the proposal and the existing rule, track segments that do not meet the specific requirements of the categorical *de minimis* exception are still potentially excludable under the general *de minimis* exception, so long as it can be demonstrated that the track segment has only ''negligible risk'' of events occurring that PTC systems are designed to prevent. FRA seeks comment generally on methods for determining negligible risk and whether there should be an established rule for what constitutes negligible risk. In the NPRM, FRA noted the difficulty the agency encountered when seeking to quantify risk in the development of the residual risk qualifying test with respect to the initial PTC final rule issued on January 15, 2010, and that it could be difficult to quantify risk in this circumstance as well. To establish a quantified risk assessment as AAR requested in the Petition, such a calculation would presumably be necessary, and FRA requests discussion of how to quantify the risk of any particular track segment and what might be an appropriate threshold using that quantification. Additionally, FRA requests that commenters specifically address what elements (e.g., traffic type, train speed, geography, grade, or proximity to populated areas, or other relevant factors), should be considered when calculating negligible risk, as well as the potential utility of the hazardous material routing analysis to determining the characteristics of a track segment with negligible risk. See 49 CFR 172.820.

FRA notes that AAR's Petition also sought a new ''limited operations'' exception in instances where there are limited freight operations on a line segment (fewer than 2 trains carrying PIH per day and less than 15 MGT of traffic annually), and where additional restrictions are imposed (i.e., 40-mph speed restriction, exclusions of any track segments with heavy grades, special notification requirements prior to entering work zones, and temporal separation or an alternative achieving at least as much risk reduction). As noted in the NPRM, FRA was not willing to propose such an exception since FRA was provided limited flexibility in the statute to modify the definition of ''main line'' for freight operations, and the exception is already covered by the general *de minimis* exception. FRA seeks comment from all interested parties regarding these issues and any additional information related to AAR's limited operations suggestion contained in its Petition.

B. Yard Movement Exceptions

While yard tracks fall outside the statutory PTC mandate, movements associated with yard operations frequently require some movement along main track adjacent to or within a yard. As FRA recognized in the NPRM, PTC system implementation and operation for such movements poses significant burdens. As a result, FRA proposes an exception from PTC equipage requirements for locomotives performing movements associated with yard operations as long as appropriate safeguards are implemented to ensure that the risk of PTC-preventable accidents and release of PIH materials is negligible. In particular, FRA proposes a new *de minimis* exception for movements associated with yard operations and seeks comments on how to tailor such operations to provide adequate safety mitigation. Consistent with the 20-mile distance limitation for transfer train movements in 49 CFR part 232 and the limitation for Class II and Class III railroads operating PTC-unequipped locomotives, FRA proposes that movements under the new yard movements *de minimis* exception be limited to 10 miles from entry onto PTC-equipped main line track. This limitation allowed for 20-mile round-trip train movements while limiting the track segment exposed to unequipped movements to only 20 miles. In the NPRM, FRA requests comment on the proposed 10-mile limitation and seeks information as to whether 10 miles is the appropriate limit. Specifically, FRA is seeking discussion of the impact of the 10-mile limit on current switching operations. FRA also estimates that 500 locomotives would not have to be equipped with PTC onboard apparatuses if a 10-mile limit were established. FRA requests comment on this estimate as well as estimates of the number of locomotives affected if instead FRA were to adopt a 20-mile limit from entry on to PTC-equipped main line track. FRA also requests comments regarding other operational benefits or hazards that might result from extending the limit to 20 miles. FRA further recognizes that there may be unusual switching operations that pose only a negligible risk of a PTC-

preventable accident or PIH material release but nonetheless would not qualify for the *de minimis* exception as defined here. FRA requests examples of such operations, if any exist, and seeks comment on the practicability of the waiver process as an acceptable method of handling such operations.

In the Petition, AAR suggested a concept that it refers to as ''absolute protection'' to address the issue of yard movements. The AAR's proposal would require that the dispatcher withhold movement authority between two points of control by signal indication or mandatory directive; that the movement of non-PTC equipped locomotives and non-initialized locomotives would be limited to 30 mph; and that the distance the locomotives would be permitted to travel from a yard or terminal would be limited to 20 miles. FRA solicited comment on AAR's proposal in the NPRM and continues to seek comments on whether the AAR's proposal regarding dispatcher control of train movements provides a sufficiently low risk of an accident and PIH release to support approval of such an operating restriction.

C. Provision on En Route Failures

In the NPRM, FRA seeks comment on the issue of en route failures and suggestions for other alternative default provisions, in addition to the existing authority for railroads to provide alternative methods of resolving en route failures in their PTC Safety Plans. Although the NPRM notes that FRA rejected AAR's request in the Petition to amend the existing rule with regard to en route failures, that statement was intended to mean that based on the information currently available to FRA, it was not willing to propose a specific change to the existing rule in the NPRM. FRA remains open to consideration of viable suggestions and ideas for handling en route failures in a manner different than that contained in the existing rule and encourages all interested parties to provide such comments on this issue. As discussed below, FRA seeks specific comment on the potential frequency of en route failures, any potential safety measures or operational restrictions that could be utilized in the event of an en route failure, as well as any information or data regarding the severity of the effects on the rail network that might arise due to compliance with the existing en route failure requirements. FRA also seeks comment on the degree of flexibility proposed 49 CFR 236.1029 allows FRA to address en route failures.

As stated in the NPRM, FRA recognizes that there may be issues with PTC system reliability during the early periods of use, and seeks to balance the statutory mandate for increased safety with the realities of implementing new and previously undeveloped systems, the failures of which pose significant risks to overall network capacity. Accordingly, FRA further seeks comment on the appropriate balance of the safety risk and risk to network capacity both during the initial rollout of PTC systems and once PTC systems are fully developed with system failures mostly resolved. As part of that discussion, FRA requests information on the experiences to date with PTC system failures and system reliability. FRA also requests information on the actual consequences experienced and the potential consequences of maintaining the current en route failure provisions, including potential modal diversion due to diminished capacity. FRA also seeks comment on replacing the existing ''en route failure'' provisions with limitations that pose less risk of diminishing network capacity. One method of mitigating potential reductions in network capacity could be a process to phase in the more stringent ''en route failure'' requirements as PTC systems mature and become more reliable. FRA seeks comment on this potential method generally and on the specifics of potential timeframes and phase-in procedures for the ''en route failure'' requirements.

Issued in Washington, DC, on January 22, 2013.

Joseph C. Szabo,

Administrator.

[FR Doc. 2013–01596 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 78, No. 18

Monday, January 28, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 22, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by February 27, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC, 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Objection to New Land Management Plans, Plan Amendments, and Plan Revisions

OMB Control Number: 0596–0158.

Summary of Collection: The process for submitting objections to new land management plans, plan amendments, and plan revisions is set forth in 36 CFR part 219, subpart B. An objector must provide their name, mailing address, telephone number, and identify the specific proposed plan, amendment, or revision that is the subject of the objection. This is the minimum information needed for a citizen or organization to explain the nature of and rational for objections to new land management plans, plan amendments, and plan revisions.

This information must accompany a concise statement explaining how the environmental disclosure documents, if any, and proposed plan, amendment, or revision are inconsistent with law, regulation, Executive Order, or policy and any recommendations for change. The Reviewing Officer then reviews the objection(s) and relevant information and responds to the objector(s) in writing.

Need and Use of the Information: The information collected (objections to new land management plans, plan amendments, and plan revisions) is analyzed and responded to by a Forest Service official. At times, this information is used to modify land and resource management planning decisions. Forest supervisors and regional forests that make decisions on land and resource management planning also use the information. Without this information, the agency's decision-making will suffer from a reduction in public input and agency relationships with the public will deteriorate.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 36.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 360.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–01601 Filed 1–25–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 22, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the 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 regarding this information collection received by February 27, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such

persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: List Sampling Frame Survey.

OMB Control Number: 0535–0140.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics * * *'' The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies heavily on the use of sample surveys statistically drawn from ''List Sampling Frame.'' The List Sampling Frame is a database of names and addresses, with control data, that contains the components values from which these samples can be drawn.

Need and Use of the Information: Data from criteria surveys are used to provide control data for new records on the list sampling frame. This information is utilized to define the size of operation, define sample populations and establish eligibility for the Census of Agriculture. New names and addresses of potential farms are obtained on a regular basis from growers association, other government agencies and various outside sources. This information is used to develop efficient sample designs, which allows NASS the ability to draw reduced sample sizes from the originally large universe populations.

Description of Respondents: Farms.

Number of Respondents: 174,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 42,576.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–01602 Filed 1–25–13; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the District of Columbia Advisory Committee to the Commission will convene at 12:00 p.m. (ET) on Tuesday, February 12, 2013, at the 1331 Pennsylvania Avenue, Suite 1150, Conference Room, Washington, DC 20425. The purpose of the meeting is project planning.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Tuesday, March 19, 2013. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Persons needing accessibility services should contact the Eastern Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, on January 23, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–01678 Filed 1–25–13; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

The National Advisory Council on Innovation and Entrepreneurship Meeting of the National Advisory Council on Innovation and Entrepreneurship

AGENCY: U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship will hold a meeting on Tuesday, February 19, 2013. The open meeting will be held from 10:00 a.m.–12:00 p.m. and will be open to the public via conference call. The meeting will take place at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. The Council was chartered on November 10, 2009 to advise the Secretary of Commerce on matter related to innovation and entrepreneurship in the United States.

DATES: February 19, 2013.

Time: 10:00 a.m.–12:00 p.m. (EST).

ADDRESSES: U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. Please specify if any specific requests for participation two business days in advance. Last minute requests will be accepted, but may be impossible to complete.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the latest initiatives by the Administration and the Secretary of Commerce on the issues of innovation, entrepreneurship and commercialization. The meeting will also discuss efforts by the U.S. Department of Commerce around manufacturing, and NACIE's insights on the matter. Specific topics for discussion include manufacturing, investment, exports, innovation commercialization, entrepreneurship, federal programs for commercialization and technology transfer and a second term agenda supporting innovation, entrepreneurship and commercialization with senior Administration officials. Any member of the public may submit pertinent questions and comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to the Office of Innovation and Entrepreneurship at the contact information below. Copies of the meeting minutes will be available within 90 days.

FOR FURTHER INFORMATION CONTACT: Nish Acharya, Office of Innovation and Entrepreneurship, Room 7019, 1401 Constitution Avenue, Washington, DC 20230; telephone: 202–482–4068; fax: 202–273–4781. Please reference ''NACIE February 19 2013'' in the subject line of your fax.

Dated: January 16, 2013.

Nish Acharya,

Director, Office of Innovation & Entrepreneurship, U.S. Department of Commerce.

[FR Doc. 2013–01661 Filed 1–25–13; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1877]

Approval for Manufacturing Authority, Foreign-Trade Zone 158, Morgan Fabrics Corporation (Upholstered Furniture Covering Sets), Verona, MS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Mississippi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 158, has requested manufacturing authority on behalf of Morgan Fabrics Corporation, within FTZ 158 in Verona, Mississippi (FTZ Docket 17–2012, filed 3–19–2012);

Whereas, notice inviting public comment has been given in the **Federal Register** (77 FR 17012, 3–23–2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were subject to certain restrictions and conditions;

Now, therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures within FTZ 158 on behalf of Morgan Fabrics Corporation (MFC), as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to the following restrictions and conditions:

1. The annual quantitative volume of foreign micro-denier suede upholstery fabric finished with a hot caustic soda solution that MFC may admit to FTZ 158 under nonprivileged foreign status (19 CFR 146.42) is limited to 3.0 million square yards.
2. MFC must admit all foreign-origin upholstery fabrics other than micro-denier suede fabric finished with a hot caustic soda solution to the zone under domestic (duty-paid) status (19 CFR 146.43).
3. For the purpose of monitoring by the FTZ Staff, MFC shall submit additional operating information to supplement its annual report data.
4. The authority for MFC shall remain in effect for a period of five years from the date of approval by the FTZ Board.

Signed at Washington, DC, this 11th day of January 2013.

Paul Piquado,

Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–01699 Filed 1–25–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–6–2013]

Foreign-Trade Zone 22—Chicago, IL, Notification of Proposed Production Activity, Panasonic Corporation of North America, (Kitting of Consumer Electronics), Aurora, IL

The Illinois International Port District, grantee of FTZ 22, submitted a notification of proposed production activity on behalf of Panasonic Corporation of North America (PNA), located in Aurora, Illinois. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on January 11, 2013.

The PNA facility is located within Site 28 of FTZ 22. The facility is used for the kitting of consumer electronics parts into retail packages. Pursuant to 15 CFR 400.14(b)4 of the regulations, FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt PNA from customs duty payments on the foreign status components used in export production. On its domestic sales, PNA would be able to choose the duty rates during customs entry procedures that apply to camera kits, digital cameras with lenses, digital cameras with memory cards, home theater systems and camera systems (duty rate ranges from duty-free to 2.1%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: SD cards, leather camera cases, digital still cameras, camera lenses, home theater systems, HDMI cables, quick start guides and dome enclosures (duty rate ranges from duty-free to 4.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 11, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: January 22, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–01697 Filed 1–25–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–5–2013]

Notification of Proposed Production Activity, Generac Power Systems, Inc., Subzone 41J, (Generators, Pressure Washers, Engines and Other Related Components), Whitewater, Edgerton and Jefferson, WI

The Port of Milwaukee, grantee of FTZ 41, submitted a notification of proposed production activity on behalf of Generac Power Systems, Inc. (Generac), operator of Subzone 41J. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on January 14, 2013.

The Generac facilities are located at three sites in Whitewater, Edgerton and Jefferson, Wisconsin. The facilities are used for the production of generators, pressure washers, engines and other related components. Pursuant to 15 CFR 400.14(b)4 of the regulations, FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Generac from customs duty payments on the foreign status components used in export production (15% of annual shipments). On its domestic sales, Generac would be able to choose the duty rates during customs entry procedures that apply to generators, power washers, and other related components, including engines,

transfer switches, panel boards and modules, harnesses, cables and cords (duty rates range from free to 3.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: Lubricating oil; paints and varnishes; adhesives/glues; steel reinforced hose; hose fittings; tape; articles of plastic, including bags; caps; o-rings and assemblies; articles of rubber; including hoses reinforced with textiles, V-belts, pneumatic tires for industrial machines, O-rings, gasket seals, rubber parts and vibration maintenance kits; wood pallets; alcohol wipes; cardboard boxes/liners; printed labels; cards; manuals/manual kits; brochures; laminated phenolic blocks; hose screen; sand paper; exhaust blankets; woven mesh screen; articles of steel (rods, shapes, pipes, brackets, supports, mounts, covers, plates, frames, fittings, sleeves, flanges, brackets, elbow couplings, tanks caps/lids, fuel tanks, and hardware); brass fittings; copper clamps and ring assemblies; articles of aluminum (backed foil, spacers, supports, covers, stops, adapters, extrusions and miscellaneous parts); hand tools; lock sets; latches; keys; engines and related parts; pumps and related parts; fans and related parts; turbochargers; heat exchangers; CAC assemblies; oil/fuel filters; air/oil separation equipment; air filters/elements; catalytic converters; pressure washers; water jet project machines and parts; bearings; camshafts/crankshafts; bearing housings; gear pumps; gear boxes/speed changers; flywheels; pulleys; belt tensioners; gaskets; machine parts (muffler supports, brackets, and assemblies); electric motors; generators and related parts; transformers; static converters; unmagnetized ferrite ceramic; solenoids; batteries; spark plugs; ignition coils; starter motors; voltage regulators; igniters; engine starters; visual signaling equipment; de-icing heaters; electrical heating resistor kits; display panels; sound signaling apparatus; printed circuit assemblies; AC line filters; dielectric items of paper/plastic; capacitors; circuit breakers; switching apparatus; control panels; transfer switches/panel boards; assembly motor steppers; diode rectifiers; wire cable/power cords; ceramic insulators; trailer parts; educational display items; sensors; gas/smoke analysis apparatus; gas pressure testers; meters; thermostats; reusable containers; and test engines and other items (duty rates range from free to 10.7%). The request indicates that certain radial ball bearings are subject to an antidumping/countervailing duty (AD/CVD) order. The FTZ regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD actions be admitted to the subzone in privileged foreign status (19 CFR 146.41). Generac has indicated that any textile products would be admitted in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 11, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via www.trade.gov/ftz.

For further information, contact Diane Finver at *Diane.Finver@trade.gov* (202) 482–1367.

Dated: January 22, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–01696 Filed 1–25–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on February 7, 2013, 10:00 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening Remarks and Introductions.
2. Remarks from BIS senior management.
3. Presentation by DuPont on the impact of Australia Group and Wassenaar membership for Mexico in particular.
4. Report of Composite Working Group and other working groups.
5. Report on regime-based activities.
6. Public comments and new business.
7. Request for volunteers for Chairperson.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ l0(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov*, no later than January 31, 2013.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 2, 2012, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: January 22, 2013.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2013–01598 Filed 1–25–13; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Seven Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry representatives, academic leaders and

U.S. Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members may be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately four times per year. Members of the Committees will not be compensated for their services.

The seven TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: The Export Administration Regulations (EAR) and Procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Category 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine), and 9 (propulsion systems, space vehicles, and related equipment) and the Emerging Technology and Research Advisory Committee: (1) The identification of emerging technologies and research and development activities that may be of interest from a dual-use perspective; (2) the prioritization of new and existing controls to determine which are of greatest consequence to national security; (3) the potential impact of dual-use export control requirements on research activities; and (4) the threat to national security posed by the unauthorized exports of technologies.

To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov.*

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Yvette Springer on (202) 482–2813.

Dated: January 22, 2013.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2013–01599 Filed 1–25–13; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas (TRQ) on the Import of Certain Worsted Wool Fabrics for Calendar Year 2013

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of allocation of 2013 worsted wool fabric tariff rate quota.

SUMMARY: The Department of Commerce (Department) has determined the allocation for Calendar Year 2013 of imports of certain worsted wool fabrics under tariff rate quotas established by Title V of the Trade and Development Act of 2000 (Pub. L. 106–200), as amended by the Trade Act of 2002 (Pub. L. 107–210), the Miscellaneous Trade Act of 2004 (Pub. L. 108–249), and the Pension Protection Act of 2006 (Pub. L. 109–280), and further amended pursuant to the Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343). The companies that are being provided an allocation are listed below.

FOR FURTHER INFORMATION CONTACT: Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2043.

SUPPLEMENTARY INFORMATION:

Background: Title V of the Trade and Development Act of 2000, as amended by the Trade Act of 2002, the Miscellaneous Trade Act of 2004, the Pension Protection Act of 2006, and the Emergency Economic Stabilization Act of 2008, creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTSUS) heading 9902.51.11), the reduction in duty is limited to 5,500,000 square meters in 2013. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTSUS heading 9902.51.15), the reduction is limited to 5,000,000 square meters in 2013. The Miscellaneous Trade Act of 2004 requires the President to ensure that such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Presidential Proclamation 7383, of December 1, 2000, authorized the Secretary of Commerce to allocate the quantity of worsted wool fabric imports under the tariff rate quotas.

The Miscellaneous Trade Act also authorized Commerce to allocate a new HTS category, HTS 9902.51.16. This HTS refers to worsted wool fabric with average fiber diameter of 18.5 microns or less. The amendment further provides that HTS 9902.51.16 is for the benefit of persons (including firms, corporations, or other legal entities) who weave worsted wool fabric in the United States. For HTS 9902.51.16, the reduction in duty is limited to 2,000,000 square meters in 2013.

On January 22, 2001 the Department published interim regulations establishing procedures for applying for, and determining, such allocations (66 FR 6459, 15 CFR 335). These interim regulations were adopted, without change, as a final rule published on October 24, 2005 (70 FR 61363). On September 21, 2012, the Department published notices in the **Federal Register** (77 FR 58524–26) soliciting applications for an allocation of the 2013 tariff rate quotas with a closing date of October 22, 2012. The Department received timely applications for the HTS 9902.51.11 tariff rate quota from 10 firms. The Department received timely applications for the HTS 9902.51.15 tariff rate quota from 15 firms. The Department received a timely application for the HTS 9902.51.16 tariff rate quota from 1 firm. All applicants were determined eligible for an allocation. Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

Firms That Received Allocations

HTS 9902.51.11, fabrics, of worsted wool, with average fiber diameter greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading

5112.11.60 and 5112.19.95). Amount allocated: 5,500,000 square meters.

Companies Receiving Allocation

Adrian Jules Ltd.—Rochester, NY
Gil Sewing Corp.—Chicago, IL
HMX, LLC—New York, NY
Hugo Boss Fashions, Inc.—Brooklyn, OH
J.A. Apparel Corp.—New York, NY
John H. Daniel Co.—Knoxville, TN
Miller's Oath—New York, NY
Saint Laurie Ltd.—New York, NY
Tom James Co.—Franklin, TN
Warren Sewell Clothing Co., Inc.—Bremen, GA

HTS 9902.51.15, fabrics, of worsted wool, with average fiber diameter of 18.5 micron or less, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.30 and 5112.19.60). Amount allocated: 5,000,000 square meters.

Companies Receiving Allocation

Adrian Jules Ltd.—Rochester, NY
Brooks Brothers Group—New York, NY
Elevee Custom Clothing—Van Nuys, CA
Gil Sewing Corp.—Chicago, IL
HMX, LLC—New York, NY
Hugo Boss Fashions, Inc.—Brooklyn, OH
J.A. Apparel Corp.—New York, NY
John H. Daniel Co.—Knoxville, TN
Martin Greenfield Clothiers—Brooklyn, NY
Miller's Oath—New York, NY
Saint Laurie Ltd.—New York, NY
Shelton and Company—East Rutherford, NJ
Southwick Apparel LLC—Haverhill, MA
Tom James Co.—Franklin, TN
Warren Sewell Clothing Co., Inc.—Bremen, GA

HTS 9902.51.16, fabrics, of worsted wool, with average fiber diameter of 18.5 micron or less, certified by the importer as suitable for use in making men's and boy's suits (provided for in subheading 5112.11.30 and 5112.19.60). Amount allocated: 2,000,000 square meters.

Companies Receiving Allocation

Warren Corporation—Stafford Springs, CT

Dated: January 22, 2013.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel

[FR Doc. 2013–01703 Filed 1–25–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Columbia University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 12–047. *Applicant:* Columbia University, New York, NY 10027. *Instrument:* Electron Microscope. *Manufacturer:* FEI Co., Czech Republic. *Intended Use:* See notice at 77 FR 72826, December 6, 2012.

Docket Number: 12–052. *Applicant:* Stanford University, Stanford, CA 94305. *Instrument:* Titan 80–300 Environmental Transmission Electron Microscope. *Manufacturer:* FEI Co., the Netherlands. *Intended Use:* See notice at 77 FR 72826, December 6, 2012.

Docket Number: 12–059. *Applicant:* Stanford University, Stanford, CA 94305. *Instrument:* Helios 600i Dual Beam Focused Ion Beam/Scanning Electron Microscope. *Manufacturer:* FEI Co., the Netherlands. *Intended Use:* See notice at 77 FR 72826, December 6, 2012.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: January 22, 2013.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2013–01702 Filed 1–25–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Colorado Boulder, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC.

Comments: None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 12–053. *Applicant:* University of Colorado Boulder, Denver, CO 80203. *Instrument:* HF2LI Lock-In System. *Manufacturer:* Zurich Instruments AG, Switzerland. *Intended Use:* See notice at 77 FR 74647, December 17, 2012. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. *Reasons:* The instrument will be used to measure detected near-field signals scattered off an Atomic Force Microscope (AFM) tip in a scattering-Scanning Near-field Optical Microscope (s-SNOM). The instrument will detect the magnitude and phase of the light scattered by an AFM tip to measure the electromagnetic near-field of optical antennas, plasmonics in metals and semiconductors (including graphene), photonic crystals, and other nanoscale spectroscopy applications. The instrument has the ability to fully digitize the measured signal and analyze it at 50 MHz, as well as the ability to demodulate many frequencies at once, which is essential to the measurement technique. Demodulation at 50 MHz is necessary because the AFM tip oscillates at 350–300 kHz, and higher harmonics (5th or 6th) of this oscillation must be measured to isolate the near-field signal.

Docket Number: 12–054. *Applicant:* Purdue University, West Lafayette, IN 47909–2036. *Instrument:* DD Neutron Generator. *Manufacturer:* NSD Fusion, Germany. *Intended Use:* See notice at 77

FR 74647, December 17, 2012. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. *Reasons:* The instrument will be used to determine the behavior of produced scintillation light and ionization electrons of low energy nuclear recoils of Xenon, as well as to compare the combination of energy released in these two channels to energy released in electronic recoils of the same energy. The scintillation and ionization signals are studied in a detector vessel that lies underneath 5 meters of water, thus the instrument needs to be water tight. To study the scintillation light and ionization behavior of liquid xenon to neutrons from a mono-energetic neutron source with energies close to 2.5 MeV, each neutron interaction must be resolved separately, and thus arrive at most once every millisecond. The instrument has been proven to show less than a few hundred counts per second when operated at low voltage, and thus meets this requirement.

Docket Number: 12–057. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Fast Ferrite Tuner. *Manufacturer:* AFT Microwave GmbH, Germany. *Intended Use:* See notice at 77 FR 74647, December 17, 2012. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. *Reasons:* The instrument is part of a magnetic field-aligned Ion Cyclotron RF antenna, which is used to automatically follow the load variation in real time and make the antenna system load tolerant. The instrument's unique specifications are its frequency range of 50–80 MHz and 5 MW circulating power.

Docket Number: 12–058. *Applicant:* Regents of the University of California, Lawrence Berkeley National Laboratory, Berkeley, CA 94720. *Instrument:* Neodymium Iron Boron (NdFeB) Magnetic Block-HXU Model (Vacodym 776). *Manufacturer:* Vacuumschemelze GmbH & Co., KG, Germany. *Intended Use:* See notice at 77 FR 76456, December 28, 2012. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. *Reasons:* The instrument will be used to study matter on the fundamental atomic length scale and the associated ultrafast time scales of atomic motion and electronic transformation. The NdFeB magnet blocks must be of high magnetic field density to achieve the base spectral range. They must also be of high uniformity in order to achieve Free-Electron Laser (FEL) saturation. In addition to meeting these requirements, the unique capabilities of this instrument are expanded spectral reach, x-ray beams with controllable polarization, and ''pump'' pulses over a vastly extended range of photon energies to a sample, which are synchronized to the Linac Coherent Light Source II project's ray probe pulses with controllable inter-pulse time delay.

Docket Number: 12–063. *Applicant:* University of Pittsburgh, Pittsburgh, PA 15260. *Instrument:* Dilution Refrigerator with 9/2/2T Vector Superconducting Magnet. *Manufacturer:* Leiden Cryogenics, the Netherlands. *Intended Use:* See notice at 77 FR 76456–57, December 28, 2012. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. *Reasons:* The instrument will be used, in conjunction with the instrument imported under docket 12–065, to develop ways for preserving quantum information in a way that is immune to a wide variety of decoherence mechanisms, to program fundamental couplings at near-atomic scales, for the quantum simulation of ''metasuperconductors,'' and to develop new mechanisms for the transfer of quantum information between long-lived localized states and delocalized states. The samples to be studied are a thin layer of $LaAlO_3$ (LAO), grown on $SrTiO_3$, which undergoes a metal to insulator transition when the LAO thickness is greater than 3 unit cells. The unique features of this instrument are the ability to cool samples to T<50 mK using cryogen-free cooling where possible, an integral cryogen-free 3 axis vector magnet (>5/1/1 T), an integral large field magnet (>18T), the ability to rotate the orientation in a large field, and scanning probe microscopy capability at base temperature (T<50mK). These features enable the sample to be cooled below the superconducting transition temperature (Tc~200mK), to be rotated in any orientation relative to the magnetic fields, allow the investigation of the large spin-orbit field present in the samples (Bso~15T), and on nanometer size scales gate, modify and probe nanowire devices and quantum dot arrays.

Docket Number: 12–065. *Applicant:* University of Pittsburgh, Pittsburgh, PA 15260. *Instrument:* Motorized Two Axis Sample Rotator for Dilution Refrigerator. *Manufacturer:* Attocube Systems, Germany. *Intended Use:* See notice at 77 FR 76456–57, December 28, 2012. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. *Reasons:* The instrument will be used, in conjunction with the instrument imported under docket 12–063, to develop ways for preserving quantum information in a way that is immune to a wide variety of decoherence mechanisms, to program fundamental couplings at near-atomic scales, for the quantum simulation of ''metasuperconductors,'' and to develop new mechanisms for the transfer of quantum information between long-lived localized states and delocalized states. The samples to be studied are a thin layer of $LaAlO_3$ (LAO), grown on $SrTiO_3$, which undergoes a metal to insulator transition when the LAO thickness is greater than 3 unit cells. The unique features of this instrument are the ability to cool samples to T<50 mK using cryogen-free cooling where possible, an integral cryogen-free 3 axis vector magnet (>5/1/1 T), an integral large field magnet (>18T), the ability to rotate the orientation in a large field, and scanning probe microscopy capability at base temperature (T<50mK). These features enable the sample to be cooled below the superconducting transition temperature (Tc~200mK), to be rotated in any orientation relative to the magnetic fields, allow the investigation of the large spin-orbit field present in the samples (Bso~15T), and on nanometer size scales gate, modify and probe nanowire devices and quantum dot arrays.

Dated: January 22, 2013.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2013–01700 Filed 1–25–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 92–11A01]

Export Trade Certificate of Review

ACTION: Notice of Application (92–11A01) to amend the Export Trade Certificate of Review Issued to Aerospace Industries Association of America Inc., Application no. 92–11A01.

SUMMARY: The Office of Competition and Economic Analysis (''OCEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 92–11A01.''

The Aerospace Industries Association of America Inc. (''AIAA'') original Certificate was issued on September 8, 1992 (57 FR 41920, September 14, 1992). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Aerospace Industries Association of America Inc. (''AIAA''), 1000 Wilson Boulevard, Suite 1700, Arlington, VA 22209.

Contact: Matthew F. Hall, Attorney, Telephone: (206) 862–9700.

Application No.: 92–11A01.

Date Deemed Submitted: January 11, 2013.

Proposed Amendment: AIAA seeks to amend its Certificate to:

1. Add the following companies as new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): 3M Company (St. Paul, MN); Aireon LLC (McLean, VA); Align Aerospace, LLC (Chatsworth, CA); Allied Telesis, Inc. (Bothell, WA); ARINC Aerospace (Annapolis, MD), Benchmark Electronics, Inc. (Angleton, TX); BRS Aerospace (St. Paul, MN); Camcode Division of Horizons, Inc. (Cleveland, OH); CPI Aerostructures, Inc. (Edgewood, NY); Deltek, Inc. (Herndon, VA); Denison Industries, Inc. (TX); ENSCO, Inc. (Falls Church); Ernst & Young LLP; (New York, NY); Fluor Corporation (Irving, TX); Galaxy Technologies (Winfield, KS), GKN Aerospace North America (Irving, TX); Huntington Ingalls Industries, Inc. (Newport News, VA); ITT Exelis (McLean, VA); Microsemi Corporation (Aliso Viejo, CA); Ontic Engineering and Manufacturing, Inc. (Chatsworth, CA); Seal Science, Inc. (Irvine, CA); TASC, Inc. (Chantilly, VA); W.L. Gore & Associates, Inc. (Newark, DE).

2. Delete the following companies as Members of AIAA's Certificate: AirDat LLC; AMSAFE Aviation; ANSYS Inc.; Armorworks Enterprises, LLC; Comtech AeroAstro, Inc.; Crown Consulting, Inc.; DynCorp International, LLC; Integral Systems, Inc.; ITT Corporation; Metron Aviation; Micro-Tronics; Paragon Space Development Corporation; Qwaltec, Inc.; Remmele Engineering, Inc.; Sanima-SCI Corporation; SM&A; Southern California Braiding Company, Inc.; TIMCO Aviation Services, Inc.; UFC Aerospace; Vermont Composites, Inc.; WIPRO Technologies.

3. Change in name or address for the following Members: Meggitt Vibro-Meter, Inc. (Londonberry, NH) has been replaced by Meggitt-USA, Inc. (Simi, CA); PPG Aerospace (Symlar, CA) has changed its name to PPG Aerospace-Sierracin Corporation; and Woodward Governor Company (Fort Collins, CO) has changed its name to Woodward, Inc.

Dated: January 17, 2013.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2013–01606 Filed 1–25–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the Department of Commerce's final determination of Stainless Steel Sheet and Strip in Coils from Mexico (Secretariat File No. USA–MEX–2009–1904–02).

SUMMARY: Pursuant to the Order of the Binational Panel dated December 18, 2012, the panel review was completed on January 18, 2013.

FOR FURTHER INFORMATION CONTACT: Ellen Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On December 18, 2012, the Binational Panel issued an Order granting a joint motion filed by the Investigating Authority (U.S. Department of Commerce) and the Complainant (ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc.) to dismiss the panel review concerning the Department of Commerce's final determination concerning Stainless Steel Sheet and Strip in Coils from Mexico. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge Committee was

filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists were discharged from their duties effective January 18, 2013.

Dated: January 18, 2013.

Ellen M. Bohon,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2013–01498 Filed 1–25–13; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Extension of Application Period for Seats for the Channel Islands National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of extension for application period and request for applications.

SUMMARY: The ONMS is extending the deadline and seeking applications for the following vacant seats on the Channel Islands National Marine Sanctuary Advisory Council: Business Alternate, Non-consumptive Recreation Alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the council's Charter.

DATES: Applications are due by March 1, 2013.

ADDRESSES: Application kits may be obtained at *http://www.channelislands.noaa.gov/sac/news.html.* Completed applications should be sent to *Danielle.lipski@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Murray, Channel Islands National Marine Sanctuary, 113 Harbor Way Suite 150 Santa Barbara, CA 93109–2315, 805–884–1464 extension 464, *michael.murray@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Council was originally established in December 1998 and has a broad representation consisting of 21 members, including ten government agency representatives and eleven members from the general public. The Council functions in an advisory capacity to the Sanctuary Superintendent. The Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the National Marine Sanctuary Program. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting to develop an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

Authority: 16 U.S.C. 1431, et seq.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 18, 2013.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–01653 Filed 1–25–13; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Florida Keys National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following positions on the Florida Keys National Marine Sanctuary Advisory Council: Boating Industry (alternate), and Fishing—Commercial—Marine/Tropical (alternate). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by March 6, 2013.

ADDRESSES: Application kits may be obtained from Beth Dieveney, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Beth Dieveney, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040; (305) 809–4700 x228; *beth.dieveney@noaa.gov.*

SUPPLEMENTARY INFORMATION: Per the council's Charter, if necessary, terms of appointment may be changed to provide for staggered expiration dates or member resignation mid term.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 18, 2013.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–01654 Filed 1–25–13; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC322

Endangered Species; File No. 16248

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Riverbanks Zoo and Garden, P.O. Box 1060, Columbia, South Carolina 29202 [Jennifer Rawlings, Responsible Party], has been issued a permit to hold shortnose sturgeon (*Acipenser brevirostrum*) for the purposes of enhancement.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave. South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On October 30, 2012, notice was published in the **Federal Register** (77 FR 65673) that a request for an enhancement permit to take shortnose sturgeon had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The Riverbanks Zoo and Garden has been issued a permit to continue enhancement activities previously authorized under Permit No. 1589. Activities include the care and maintenance of two captive-bred, non-releasable shortnose sturgeon. The display is used to increase public awareness of the shortnose sturgeon and its status by educating the public on shortnose sturgeon life history and the reasons for the species decline. The project to display endangered cultured shortnose sturgeon responds directly to a recommendation from the NMFS recovery plan outline for this species. The permit does not authorize any takes from the wild, nor does it authorize any release of captive sturgeon into the wild. The permit is valid for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 23, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–01701 Filed 1–25–13; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Proposed Collection, Comment Request: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on a proposed collection of certain information by the Commission's Office of Consumer Outreach (''OCO''). Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. The Commission is soliciting comments for a proposed generic information collection that will help the CFTC satisfy responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–2–3 (''Dodd-Frank Act''), found in Section 748 of the Dodd-Frank Act. The proposed generic information collection will provide the OCO a means to gather qualitative consumer and stakeholder feedback in an efficient, timely manner to facilitate service delivery.

DATES: Comments must be submitted on or before March 29, 2013.

ADDRESSES: You may submit comments, regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden. Please refer to this notice in any correspondence. Comments, identified by ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery,'' may be submitted by any of the following methods:

- *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.
- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.*

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

FOR FURTHER INFORMATION CONTACT: Nisha Smalls, Office of Consumer Outreach, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, (202) 418–5895; FAX: (202) 418–5541; email: *nsmalls@cftc.gov* and refer to this **Federal Register** notice.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: In accordance with section 748 of the Dodd-Frank Act, the OCO anticipates undertaking a variety of service delivery-focused activities over the next few years which include consumer outreach and information-sharing with stakeholders that are responsive to stakeholders' needs and sensitive to changes in the consumer market. The proposed information collection activity will use similar methods for information collection or otherwise share common elements, and provide a means to gather qualitative customer and stakeholder feedback in an efficient, timely manner. By qualitative feedback we mean information that provides useful information on perceptions and opinions. The solicitation of information on delivery of consumer services will address such areas as appropriate messages, effective message delivery methods, and current consumer beliefs, psychographics and social norms that will assist the agency in developing an outreach and communications campaign designed to change consumer behavior. Since these systems will use similar methods for information collection or otherwise share common elements, the OCO is proposing a generic clearance for this process which will allow the OCO to implement these systems and meet the obligations of the PRA without the delays of the normal clearance process. Collection methods may include focus

[1] 17 CFR 145.9.

groups and surveys as well as other relevant collection methods that meet the conditions appropriate for a generic clearance as outlined below. The OCO will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the Commission (if released, the Commission must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Type of Review: Generic Clearance Request.

Affected Public: Individuals and Households, Businesses and Organization, State, Local or Tribal governments.

Respondent's Obligation: Voluntary.

Estimated Number of Respondents: A preliminary estimate of aggregate burden for this generic clearance follows. Since the statutory mandate behind the OCO's consumer outreach is new, the estimate of the number of respondents is a projection and could change significantly based on the collection method ultimately used in the research.

Estimated number of Respondents/ Affected Entities: 240.

Estimated average number of responses: 10 per year.

Estimated total average annual burden on respondents: 2,400 responses.

Frequency of collection: once per request.

Average minutes per response: 120.

Estimated total annual burden hours requested: 4800 hours.

Request for Comments

The Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Issued in Washington, DC, this 22nd day of January 2013, by the Commission.

Stacy D. Yochum,

Counsel to the Executive Director.

[FR Doc. 2013–01607 Filed 1–25–13; 8:45 am]

BILLING CODE 6531–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, February 15, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*.

CONTACT PERSON FOR MORE INFORMATION: Stacy Yochum, 202–418–5157.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–01758 Filed 1–24–13; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Cost-Sharing Rates for Pharmacy Benefits Program of the TRICARE Program

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of change to cost-sharing rates to the TRICARE Pharmacy Benefits Program.

SUMMARY: This notice is to advise interested parties of cost-sharing rate change for the Pharmacy Benefits Program.

DATES: The cost-sharing rate changes will be effective February 1, 2013.

FOR FURTHER INFORMATION CONTACT: RADM Thomas J. McGinnis, TRICARE Management Activity, Pharmaceutical Operations Directorate, telephone (703) 681–2890.

SUPPLEMENTARY INFORMATION: Section 712 of the National Defense Authorization Act for 2013 establishes the cost-sharing rates under the TRICARE pharmacy benefits program as $5 for generic medications, $17 for formulary medications and $44 for non-formulary medications for not more than a 30-day supply obtained through retail pharmacies, and $0 for generic medications, $13 for formulary medications, and $43 for non-formulary medications for not more than a 90-day supply obtained through the TRICARE mail-order pharmacy. The Act limits any annual increase in cost-sharing rates under the TRICARE pharmacy program to the amount equal to the percentage increase by which retiree pay is increased beginning October 1, 2013. The effective date shall apply to prescriptions obtained under TRICARE on or after February 1, 2013.

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–01642 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0001]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on February 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before February 27, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 27, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DSCA 03

SYSTEM NAME:

Regional Center Persons/Activity Management System (RCPAMS).

SYSTEM LOCATION:

Horizon Data Center Solutions, 9651 Hornbaker Road, Manassas, Virginia 20109–3976.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD military and civilian employees, U.S. military students, Foreign Nationals, contractors, alumni, and subject matter experts affiliated with the following Defense Security Cooperation Agency's (DSCA) five regional centers: Africa Center for Strategic Studies (ACSS), Asia-Pacific Center for Security Studies (APCSS), Center for Hemispheric Defense Studies (CHDS), George Marshall European Center for Security Studies (GCMC), and Near-East-South Asia Center for Strategic Studies (NESA). Although not covered by 5 U.S.C. 552a, The Privacy Act of 1974, the system also contains data on international military students (IMS) participating in training programs at the Regional Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, other names used, religious preference, full face photograph, gender, citizenship, date and place of birth, marital status, physical description, email address, work and home addresses, work and home telephone numbers, cell phone numbers, military rank, identification and control numbers generated by RCPAMS and the Security Assistance Network (SAN), passport and visa information, health information, lodging and travel information, emergency contact(s), language capabilities, educational and employment history, training activities, race/ethnicity, spouse information and child information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 134, Under Secretary of Defense for Policy; DoD Directive 5105.65, Defense Security Cooperation Agency (DSCA); DoD Directive 5101.1, DoD Executive Agent; DoD Directive 5200.41, DoD Regional Centers for Security Studies; and DoD Directive 5132.03, DoD Policy and Responsibilities Relating to Security Cooperation.

PURPOSE(S):

The purpose of the Regional Center Persons/Activity Management System (RCPAMS) is to provide: (1) A solution for Regional Center staff to manage operational, logistical and cost details about people, events, enrollments and organizations; (2) a tool for reporting on all data related to Regional Center events; (3) a platform for sharing common processes, terminology and data elements to facilitate efficient communication between the Regional Centers; (4) a single view of each person with whom any of the Regional Centers have a relationship, representing the current snapshot and historical record of events and biographical information; (5) an interface to other systems with which the Regional Centers must exchange data for use by other users and organizations; and (6) an enterprise-class Customer Relationship Management platform to manage two-way communication between SAN and RCPAMS related to events and their participants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic storage media.

RETRIEVABILITY:

Records will be retrieved by the individual's name.

SAFEGUARDS:

Paper records are maintained in controlled areas accessible only to authorized personnel. Access to the electronic data is limited to authorized users and requires Common Access Card and is available only through systems security software inherent to the operating system and application, and all access is controlled by authentication methods to validate the approved users. Data transmission is encrypted. The information is also maintained in secured information

systems which are located in controlled access facilities, guarded 24 hours a day, and seven days a week.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approve the retention and disposition of these records, treat as permanent).

SYSTEM MANAGER AND ADDRESS:

Regional Center Persons/Activity Management Program Manager, Defense Security Cooperation Agency, ATTN: PGM/CMO—RCPAMS Program Manager, 201 12th Street, Suite 203, Arlington, VA 22202–4306.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Regional Center Persons/Activity Management Program Manager, Defense Security Cooperation Agency, ATTN: PGM/CMO—RCPAMS Program Manager, 201 12th Street, Suite 203, Arlington, VA 22202–4306.

Written requests should include the full name, current address and telephone number, and the number of the system of records notice and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the full name, current address and telephone number, and the number of the system of records notice and be signed.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense (OSD) rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–01680 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0004]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on February 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before February 27, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 4, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS E02

SYSTEM NAME:

Freedom of Information Act Case Files (December 8, 2010, 75 FR 76432).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Washington Headquarters Services (WHS) records: Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 4800 Mark Center Drive, Suite 02F09–02, Alexandria, VA 22350–3100.

DoD Education Activity (DoDEA) records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, 4800 Mark Center Drive, Suite 06D08–03, Alexandria, VA 22350–1400.

Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity (HA/TMA) records: TRICARE Management Activity, Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Records created or compiled in response to Freedom of Information Act requests and administrative appeals, i.e., original requests and administrative appeals (including requesters name, mailing address, Freedom of Information Act case number, date and subject of the request, with some requesters also voluntarily submitting additional information such as telephone numbers and email addresses), responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defenses compilation of systems of records notices may apply to this system.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''WHS records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 4800 Mark Center Drive, Suite 02F09–02, Alexandria, VA 22350–3100.

DoDEA records: Chief, Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, 4800 Mark Center Drive, Suite 06D08–03, Alexandria, VA 22350–1400.

HA/TMA records: TRICARE Management Activity, ATTN: FOIA Chief, Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to:

WHS records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 4800 Mark Center Drive, Suite 02F09–02, Alexandria, VA 22350–3100.

DoDEA records: Chief, Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, 4800 Mark Center Drive, Suite 06D08–03, Alexandria, VA 22350–1400.

HA/TMA records: TRICARE Management Activity, ATTN: FOIA Chief, Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

Requests should include the requesters name, mailing address, and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquires to:

WHS records: Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, Office of Freedom of Information, Washington Headquarters, 4800 Mark Center Drive, Suite 02F09–02, Alexandria, VA 22350–3100.

DoDEA records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, 4800 Mark Center Drive, Suite 06D08–03, Alexandria, VA 22350–1400.

Note: For DoDEA records, a non-custodial parent or legal guardian requesting records pertaining to his or her minor child or ward must also provide evidence of that relationship. For example, such parent or legal guardian may provide a copy of a divorce decree or a child custody or guardianship order that includes the child's name.

HA/TMA records: TRICARE Management Activity, Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

Requests for information should be in writing, signed, and provide evidence of the requester's identity, such as a copy of a photo ID or passport or similar document bearing the requesters signature. Requests must contain the requesters name, mailing address, Freedom of Information Act case number, name and number of this system of records notice and be signed.''

* * * * *

[FR Doc. 2013–01689 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0002]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Finance and Accounting Service proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on February 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before February 27, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150 or at (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 4, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7903

SYSTEM NAME:

Defense Working Capital Fund Accounting System (August 13, 2007, 72 FR 45231).

* * * * *

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''T7335e''.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, current address and telephone number, Social Security Numbers (SSN), and transaction or line accounting.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN for verification, current address, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN for verification, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11–R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

* * * * *

[FR Doc. 2013–01685 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0006]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on February 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before February 27, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 27, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 19

SYSTEM NAME:

Defense Occupational & Environmental Health Readiness System—Industrial Hygiene (DOEHRS–IH) (August 26, 2010, 75 FR 52513).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Information Systems Agency (DISA), 3326 General Hudnell Drive, San Antonio, Texas 78226–1834.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Members of the Armed Forces; Department of Defense (DoD)-affiliated personnel (includes DoD civilian employees, DoD contractors, and DoD foreign national employees) who live or work in areas requiring longitudinal data related to occupational, environmental, or public health.

Spouses and dependents of members of the Armed Forces and DoD-affiliated personnel if such spouse or dependent is in the area of a perceived or actual occupational, environmental, or public health event.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Identifying records: Individual's name, Social Security Number (SSN), DoD Identification Number (DoD ID Number) (or foreign identification number), date of birth, gender, race/ethnicity, citizenship, home and work email address, occupation, pay plan, pay grade, rank, service affiliation, assigned unit government agency affiliation, business address and telephone number.

Event-based records include home or local address and telephone number.

Designated event records: Occupational, environmental, and public health data on the nature and/or scope of the event and monitoring and/or surveillance data; personal protective equipment recommendations and usage; observed occupational and environmental health practices; individual health education and training data; public health emergency, disaster, and incident response occupational and environmental monitoring and/or surveillance data; location reporting on an individual's location(s) and time at those location(s) within the designated threat area; medical countermeasure recommendations and use; and population health education data.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C Chapter 55, Medical and Dental Care; 29 U.S.C 651, Congressional Statement of Findings and Declaration of Purpose and Policy; DoDD 4715.1E, Environment, Safety, and Occupational Health (ESOH); DoDI 6055.1, DoD Safety and Occupational Health (SOH) Program; DoDI 6055.05, Occupational and Environmental Health (OEH); DoDI 6055.17, DoD Installation Emergency Management (IEM) Program; DoDI 6200.03, Public Health Emergency Management Within the Department of Defense; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To establish a database for longitudinal exposure recordkeeping and reporting to support occupational and environmental health surveillance (OEHS), public health surveillance, health risk management, and medical surveillance; and to provide this data in support of medical treatment, occupational and environmental illness evaluations, disability determinations, and claims adjudication.

To complete the collection and analysis of threat exposures for designated event areas in all phases of military operations and as a result of actual or perceived natural disasters, hazardous material releases, chemical/biological/nuclear accidents which may affect DoD-affiliated personnel.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Departments of Veterans Affairs (VA) and Labor (DOL), and the Social Security Administration, to support the adjudication of disability and other pending claims of individuals.

To the VA, and other federal agencies and private physicians to inform and support the medical care of individuals.

To the Department of Health and Human Services and the Occupational Health and Safety Administration, and other federal agencies to comply with statutory and regulatory requirements.

To government and non-government organizations for the conduct of health-related research, including epidemiologic studies, following review by an Institutional Review Board. The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

Note: This system of records may contain individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R), issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and 45 CFR Parts 160 and 164, Health and Human Services, General Administrative Requirements and Security & Privacy, respectively, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974, as amended, or mentioned in this system of records notice.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By individual SSN, DoD ID Number, foreign identification number (if applicable) and/or name, or any combination of the foregoing.''

SAFEGUARDS:

Delete entry and replace with ''Physical access to system location restricted by cipher locks, visitor escort, access rosters, and photo identification. Adequate locks are on doors and server components are secured in a locked computer room with limited access. All visitors and other persons are escorted by appropriately screened/cleared personnel at all times.

Access to the system requires two-factor authentication including Common Access Card (CAC) or, for some users, a user name and password (which must be renewed every sixty (60) days). Authorized personnel must have appropriate Information Assurance, HIPAA, and Privacy Act of 1974 training.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Disposition pending (treat records as permanent until the National Archives and Records Administration (NARA) approves the proposed retention and disposition).''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Program Manager, Defense Health Services Systems, Defense Health Headquarters, Suite 5101, 7700 Arlington Boulevard, Falls Church, VA 22042–5101.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to TMA Privacy Officer, TMA Privacy and Civil Liberties Office, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101.

Requests should contain the individual's full name and SSN and/or DoD ID Number, or foreign identification number, as applicable.

If requesting the health information of a minor (or legally incompetent person), the request must be made by that individual's parent, guardian, or person acting in loco parentis. Written proof of the capacity of the requester may be required.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written requests to the TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 Centretech Parkway, Aurora, Colorado 80011–9066.

Requests should contain the individual's full name, SSN, DoD ID Number, or foreign identification number, as applicable.

If requesting the health information of a minor (or legally incompetent person), the request must be made by that individual's parent, guardian, or person acting in loco parentis. Written proof of

the capacity of the requester may be required.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81, 32 CFR Part 311, or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Selected electronic data elements extracted from the Defense Enrollment Eligibility Reporting System (DEERS), DoD and Service-level accountability systems, as well as industrial hygienists, bioenvironmental engineers, public health officers, environmental science officers, and other professionals supporting the authorities cited.''

* * * * *

[FR Doc. 2013–01694 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–OS–0131]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a new System of Records; response to comments.

SUMMARY: The Office of the Secretary of Defense established a new Privacy Act System of Records entitled ''Public Affairs Management Information System.'' This notice responds to comments received on the Privacy Act Systems of Records Notice.

DATES: *Effective Date:* November 26, 2012.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Privacy Act Systems of Records Notice was published on October 26, 2012, in the **Federal Register** (77 FR 65370). During the comment period, one public comment was received.

Comment: The commenter noted there was ''no mention on how the records will be destroyed'' and that it ''should be spelled out in writing.''

DoD Response: A specific method of records destruction was not addressed because the scope of many of the OSD/JS systems of records notices is global and specific destruction methodology is frequently not able to be implemented globally (i.e., ''burning'' is prevalent within the National Capital Region; however, there are many DoD locations that do not have the capability). DoD Manual 5200.01 Volume 4, DoD Information Security Program, Controlled Unclassified Information (CUI) requires that ''record copies of FOUO documents shall be disposed of according to provisions of chapter 33 of title 44 U.S.C. and the DoD Component records management directives. Non-record FOUO documents may be destroyed by any of the means approved for the destruction of classified information or by any other means that would make it difficult to recognize or reconstruct the information.''

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–01684 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0003]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Intelligence Agency is proposing to alter a system to its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on February 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before February 27, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive; East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at Defense Intelligence Agency, DAN 1–C, 600 MacDill Blvd., Washington, DC 20340–0001 or by phone at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a of the Privacy Act of 1974, as amended, was submitted on January 4, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 7, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0450

SYSTEM NAME:

Drug-Free Workplace Files (September 9, 2009, 74 FR 46418).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Drug Testing Program Files.''

SYSTEM LOCATION:

Delete entry and replace with ''Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Civilian employees and applicants for employment with the Defense Intelligence Agency.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, specimen identification number, truncated Social Security Number (SSN) and records relating to testing plans, procedures, selection/scheduling records, records relating to the collection and handling of specimens,

chain of custody records and test results.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''E.O. 12564, Federal Drug Free Workplace; DoD Directive 1010.9 Civilian Employee Drug Abuse Testing Program; DIA Instruction 1015.001, Drug Free Workplace Program and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''The system is used to maintain records relating to the implementation of the Drug Testing Program; administration, selection, notification and testing of DIA employees and applicants for employment.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the DIA's compilation of systems of records notices may apply to this system.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records relating to specific cases are destroyed two years after close of case. Records relating to selection, scheduling, unaccepted applicants, negative results, and other supporting data are maintained for three years after end of event, or end of employment. Records related to administration or program planning are destroyed after three years or when superseded or obsolete. Paper records are shredded or burned, electronic records are deleted from the system.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Office of Employee Assistance, Defense Intelligence Agency 200 MacDill Blvd., Washington, DC 20340–0001.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Freedom of Information Office (DAN–1A), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Request should contain the individual's full name, current address, and telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the DIA Freedom of Information Office (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Request should contain the individual's full name, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Instruction 5400.001, Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.''

* * * * *

[FR Doc. 2013–01686 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0005]

Privacy Act of 1974; System of Records

AGENCY: Defense Security Service, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Defense Security Service is amending a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on February 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before February 27, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Blake, Defense Security Service, Office of FOIA/PA, 27130 Telegraph Road, Quantico, VA 22314 or at (571) 305–6740.

SUPPLEMENTARY INFORMATION: The Defense Security Service systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

V1–01

SYSTEM NAME:

Privacy and Freedom of Information Request Records (July 14, 1999, 64 FR 37935).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with ''Freedom of Information (FOI) records are located at the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552, Public information; agency rules, opinions, orders, records and proceedings; 5 U.S.C. 552 as amended by Pub. L. 93–502, Freedom of Information Act; 5 U.S.C. 552a, Pub. L. 93–579, the Privacy Act of 1974, as amended; DoD 5400.7–R, DoD Freedom of Information Act Program; and DoD

5400.11–R, Department of Defense Privacy Program.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Paper records are maintained in security containers and safes located in a secure area accessed by authorized personnel only. The electronic records are accessible by Common Access Card authentication only.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOIA/PA, 27130 Telegraph Road, Quantico, VA 22134.

A request for information must contain the full name of the subject individual.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Security Service, Office of FOIA/PA, 27130 Telegraph Road, Quantico, VA 22134.

A request for information must contain the full name of the subject individual.''

* * * * *

[FR Doc. 2013–01690 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2013–0002]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Air Force is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on February 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before February 27, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800 or at 202–404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

F036 AF PC B

SYSTEM NAME:

Geographically Separated Unit Copy Officer/Enlisted Performance Report (January 22, 2009, 74 FR 4018).

Reason: This is a duplicate system of records; active records are covered under SORN F036 AF PC A, Effectiveness/Performance Reporting Records (September 13, 2012, 77 FR 56632). Duplicate paper copies at geographically separated units were destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Electronic copies were deleted. Therefore, SORN F036 AF PC B, Geographically Separated Unit Copy Officer/Enlisted Performance Report (January 22, 2009, 74 FR 4018) can be deleted.

[FR Doc. 2013–01691 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2013–0005]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on February 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before February 27, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on January 4, 2013 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC U

SYSTEM NAME:

Air Force Automated Education Management System (AFAEMS) (April 29, 2010, 75 FR 22573).

* * * * *

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''F036 AF A1 A.''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force Active Duty, Air Reserve, Air National Guard and government civilians who participate in the Education Services Program and the Tuition Assistance Program.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN) and/or DoD ID Number, date of birth, mailing address, grade/rank/rate, pay grade, last pay record examined, amount, name of accountable disbursing officer, disbursing station symbol number, general accounting office exception code, date of separation, branch of service, assigned unit, education level, acquisition position, acquisition position career level, assigned base, work phone number, fax number, name of school, location of courses, course information, type of study, tuition and cost information.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2306, Operation and Administration of the Air Force Education Services Program, Public Law No: 110–417, Subtitle E—Education and Training; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''Manage the tuition assistance, enrollments and funding of individuals participating in education services.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be disclosed to civilian education institutions for the purposes of ensuring correct enrollment and billing information.

The DoD Blanket Routine Uses published at the beginning of the Air Force's compilation of systems of records notices may apply to this system.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Retrieved by name, Social Security Number and/or DoD ID number.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible by authorized personnel. Access to records is limited to person(s) responsible for servicing the record in the performance of their official duties and who are properly screened and cleared for official need-to-know. System software uses Primary Key Infrastructure (PKI)/Common Access Card (CAC) authentication to lock out unauthorized access. System software contains authorization/permission partitioning to limit access to appropriate organization level.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Data stored digitally within the system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. Backup data files will be retained for a period not to exceed 45 days. Backup files are maintained only for system restoration and are not to be used to retrieve individual records. Computer records are destroyed by erasing, deleting or overwriting.

RECORDS ARE RETAINED AND DISPOSED OF IN THE FOLLOWING WAYS:

(1) For records pertaining to the individual's education level and progress: Give to individual when released from Employment Authorization Document (EAD), discharged, or destroy when no longer on active duty.

(2) For records pertaining to requests for tuition assistance, records supporting consolidation grade sheets, and cases of non-compliance or failure: Destroy after invoices have been paid and final grades have been recorded on Individual Record Education Services form.

(3) For records pertaining to funding documents, appropriation controls, supporting documents for monitoring obligations: Destroy two years after document's fiscal year appropriation has ended its 'expired year' status and applicable fiscal year appropriation has been cancelled.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Headquarters, United States Air Force, Directorate of Force Development, 1040 Air Force Pentagon, Washington, DC 20330–1040.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, current mailing address, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained

in this system of records should address inquiries to the Headquarters, United States Air Force, Directorate of Force Development, 1040 Air Force Pentagon, Washington, DC 20330–1040.

For verification purposes, individuals should provide their full name, SSN and/or DoD ID Number, current mailing address, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)' ''

* * * * *

[FR Doc. 2013–01688 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2013–0001]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on February 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before February 27, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on December 27, 2012 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F010 AFSPC A

SYSTEM NAME:

Telecommunications Notification System (July 6, 2010, 75 FR 38792).

CHANGES:

* * * * *

SYSTEM LOCATION:

Add after first paragraph ''Air National Guard Readiness Center, 3500 Fetchet Avenue, Joint Base Andrews, MD 20762–5000.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force Active duty, Reserve, Air National Guard, government civilians and contractors.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''The paper records produced by this system will be reviewed to determine alert notification and acknowledgement times. The paper records produced will be shredded immediately after use and will not be retained longer than 1 month. Electronic records are destroyed when no longer required.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Add after first paragraph ''Program Manager, Air National Guard, Enterprise Programs Branch, 3501 Fetchet Avenue, Suite 100, Joint Base Andrews, MD 20762–5000.

Air Force installations that have access to this system official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Command Post Superintendent, 30 Space Wing Command, Post 867 Washington Ave., Suite 205, Vandenberg Air Force Base, CA 93437–6117.

Individuals at the 45th Space Wing seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the 45 Space Wing Command Post, Patrick Air Force Base, FL 32925–3002.

Individuals with the Air National Guard seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Air National Guard Readiness Center, 3500 Fetchet Avenue, Joint Base Andrews, MD 20762–5000.

Individuals seeking to determine whether information about themselves is contained in this system of records at other Air Force installations should address written inquiries to the Command Post Superintendent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

RECORDS ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves should address written inquiries to Command Post Superintendent, 30 Space Wing Command Post, 867 Washington Ave., Suite 205, Vandenberg Air Force Base, CA 93437–6117.

Individuals at the 45th Space Wing seeking access to information about themselves should address written inquiries to 45th Space Wing Command Post, Patrick Air Force Base, FL 32925–3002.

Individuals with the Air National Guard seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Air National Guard Readiness Center, 3500 Fetchet Avenue, Joint Base Andrews, MD 20762–5000.

Individuals seeking to determine whether information about themselves is contained in this system of records at other Air Force installations should address written inquiries to the Command Post Superintendent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

* * * * *

[FR Doc. 2013–01681 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2013–0004]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Air Force is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on February 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before February 27, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800 or at 202–404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

F036 AFPC B

SYSTEM NAME:

Civilian/Military Service Review Board (June 11, 1997, 62 FR 31793).

Reason: Records of this type are no longer maintained by any office within the Air Force Personnel Center (AFPC). In discussion with SORN F036 AF PC C, Military Personnel Records System Program Manager, individuals to which this SORN applies served and subsequently retired or separated prior to 2004, which makes the National Personnel Records Center (NPRC) the official repository for any and all records pertaining to their service. Therefore F036 AFPC B, Civilian/Military Service Review Board (June 11, 1997, 62 FR 31793) can be deleted.

[FR Doc. 2013–01683 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2012–0001]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy is establishing a new system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on February 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before February 27, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and

docket number 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.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, HEAD, FOIA/Privacy Act Policy Branch, Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or by phone at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 27, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM06150–6

SYSTEM NAME:

Medical Readiness Reporting System (MRRS) (May 5, 2006, 71 FR 26481).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Space and Naval Warfare Systems Center New Orleans (SSC NOLA), 2251 Lakeshore Drive, New Orleans, LA 70122–0001.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Active Duty and Reserve Navy, Marine Corps, and Coast Guard personnel.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN) and/or DoD ID Number, home address, phone number, work email address, gender, date of birth, unit assigned; medical readiness data that includes immunizations (dates and type), laboratory results and/or procedures, physicals, eye, audio and dental exams, dental readiness category and injury status.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; BUMED Note 6110, Tracking and Reporting Individual Medical Readiness Data; SECNAVINST 6120.3, Secretary of the Navy Periodic Health Assessment for Individual Medical Readiness; Pub. L. 108–735, Section 731 Ronald Reagan National Defense Authorization Act, 10 U.S.C. 136(d), Under Secretary of Defense for Personnel; 10 U.S.C. 671, Members not to be assigned outside United States before completing training; and E.O. 9397 (SSN), as amended.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper file folders and electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Computer processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared, and trained. Access to this system of records and personal information is restricted by use of the Common Access Card (CAC). Manual records and computer printouts are available only to authorized personnel having a need-to-know.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''For Marine Corps: Headquarters U.S. Marine Corps, PPO, PLN (National Plans Branch), 3000 Marine Corps Pentagon, Washington, DC 20350–3000.

For Navy: Navy Personnel Command (Pers-455), 5720 Integrity Drive, Building 791, Millington, TN 38055–3110.

For Coast Guard: United States Coast Guard (USCG), Headquarters (CG–912), 2100 2nd St. SW., Suite 1100, Washington DC 20593–0001.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the appropriate systems manager listed above.

The signed letter should contain full name and SSN and/or DoD ID Number.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the appropriate systems manager listed above.

The signed letter should contain full name and SSN and/or DoD ID Number.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

* * * * *

[FR Doc. 2013–01682 Filed 1–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0006]

Agency Information Collection Activities; Comment Request; Evaluation of State Expanded Learning Time

AGENCY: Department of Education (ED), IES.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 29, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0006 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of State Expanded Learning Time.

OMB Control Number: 1850-New.

Type of Review: New information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 7.

Abstract: This package requests approval to conduct semi-structured interviews with 21st Century Community Learning Centers (21st CCLC) state coordinators in states which received the optional Elementary and Secondary Education Act (ESEA) waiver to use 21st CCLC funds for expanded learning time (ELT). The interviews will be used to produce a descriptive report, which will summarize how states plan to use 21st CCLC funds to support ELT, the process for awarding 21st CCLC funds to support ELT, and how states will monitor subgrantees' ELT implementation.

Dated: January 22, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–01604 Filed 1–25–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–41–000]

Occidental Chemical Corporation v. Midwest Independent Transmission System Operator, Inc.; Notice of Complaint and Petition for Declaratory Order

Take notice that on January 17, 2013, pursuant to section 206 and 306 of the Federal Power Act (FPA), 16 U.S.C. 824e, and 825e (2012) and Rules 206 and 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission); 18 CFR 385.206 and 18 CFR 385.207(a)(2) (2012), Occidental Chemical Corporation (Complainant) filed (1) a formal complaint against Midwest Independent Transmission System Operator, Inc. (Respondent or MISO), alleging that the MISO QF Integration Plan is unlawful, in violation of FPA sections 205 and 206, as well as, violates the Public Utility Regulatory Policies Act of 1978 (PURPA) and the Commission's implementing regulations and (2) a petition for declaratory order requesting that the Commission direct MISO to permit qualifying facilities (QFs) to register for and participate in its markets without forgoing their statutory rights under PURPA and FERC's implementing regulations and find that the MISO QF Integration Plan is invalid and cannot be implemented by MISO because it has not been filed with FERC pursuant to section 205 of the FPA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of 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 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on February 14, 2013.

Dated: January 18, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–01611 Filed 1–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF13–2–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Planned West Leg 2014 Expansion Project, Request for Comments on Environmental Issues, and Notice of Onsite Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the planned West Leg 2014 Expansion Project (Project) involving construction and operation of facilities by Northern Natural Gas Company (Northern) in Dakota and Dodge Counties, Nebraska and Woodbury County, Iowa. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project.

Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on February 28, 2013. Further details on how to submit written comments are in the Public Participation section of this notice.

Environmental staff from the Commission's Office of Energy Projects will be in the Project area to attend Northern's open houses for the Project (February 4–6, 2013) and to conduct an onsite environmental review on February 6, 2013. FERC staff, accompanied by Northern representatives, will view the planned pipeline route from public access points (primarily road crossings), visit locations for aboveground facilities, and gather data for its environmental analysis of the planned project. Interested parties may attend and should plan to provide their own transportation. Those attending should meet Commission staff at the following location and time: Wednesday, February 6, 2013, at 9:00 a.m. CST, American Legion Hall, 901 Topaz Drive, Sergeant Bluff, Iowa 51054.

The site review will begin with project facilities in Iowa, and continue west into Nebraska. FERC staff expects the site review will take approximately two hours to complete.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Northern plans to construct the following facilities to meet customer requests for 90,430 dekatherms per day of natural gas:

- Approximately 6 miles of 20-inch-diameter pipeline, referred to as ''New Greenfield Branch Line'' from Dakota County, Nebraska to Woodbury County, Iowa;
- Two compressor stations, the Homer Compressor Station in Dakota County, Nebraska and the Fremont Compressor Station in Dodge County, Nebraska;
- A new metering station in Woodbury County, Iowa;
- A 0.4-mile tie-over between two pipelines and a valve site in Woodbury County, Iowa; and
- Minor modifications to existing facilities in Ellsworth, Ottawa and Otoe Counties, Kansas and Woodbury and Cherokee Counties, Iowa.

The general location of the Project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Construction of the planned facilities would temporarily disturb about 215 acres of land for construction of the aboveground facilities and the pipeline. Following construction, Northern would maintain about 49 acres for permanent operation of the Project facilities. The remaining 166 acres disturbed by construction would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety; and
- Cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on Page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA[3]. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the following agencies have expressed their

[1] The appendices referenced in this notice will not appear in the Federal Register. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

intention to participate as a cooperating agency in the preparation of the EA:

- Nebraska Game and Parks Commission;
- Iowa Department of Agriculture and Land Stewardship;
- U.S. Army Corp of Engineers—Omaha District; and
- Natural Resource Conservation Service.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 28, 2013.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF13–2–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With *eFiling,* you can provide comments in a variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

Once Northern files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are located under the ''For Citizens'' link on the Commission's homepage, by clicking on ''Get Involved''. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF13–2). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. Information about the onsite environmental review is posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, Northern has posted additional information about the Project on a dedicated Web site at *www.northernnaturalgas.com/expansionprojects.* From the drop-down menu, select ''West Leg 2014''. Northern may be contacted directly at 1–888–367–6671 or by email at *westleg2014expansion@nngco.com.*

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Dated: January 18, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–01608 Filed 1–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Rm11–12–000]

Availability of e-Tag Information to Commission Staff; Notice Specifying webRegistry Code

In Order No. 771,[1] the Federal Energy Regulatory Commission amended its regulations to grant the Commission access, on a non-public and ongoing basis, to the complete electronic tags (e-Tags) used to schedule the transmission of electric power interchange transactions in wholesale markets. Order No. 771 requires e-Tag Authors (through their Agent Service) and Balancing Authorities (through their Authority Service), beginning March 15, 2013, to take appropriate steps to ensure Commission access to the e-Tags covered by this Final Rule by designating the Commission as an addressee on the e-Tags.

In Order No. 771, the Commission stated that, ''following issuance of this Final Rule and the Commission's registration in the OATI webRegistry, the Commission will issue a notice specifying which entity code should be used to ensure that the Commission is an addressee on the e-Tag'' (fn. 103). Although the Commission has not completed the registration process, the Commission intends to facilitate the continued development of compliance software and processes by issuing this notice to specify that ''FERC'' will be the likely entity and tag codes registered in the Purchasing-Seller Entity section of OATI webRegistry. This code should be used to designate the Commission as an addressee to comply with 18 CFR 366.2(d) of the Commissions regulations.

As stated in footnote 103 of the Final Rule, the Commission will issue a further notice at the completion of the registration process.

Dated: January 18, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–01612 Filed 1–25–13; 8:45 am]

BILLING CODE 6717–01–P

[1] *Availability of E-Tag Information to Commission Staff,* 77 FR 76367 (Dec. 28. 2012), 141 FERC ¶ 61,235 (2012) (FR).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7186–047]

Missisquoi Associates; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 7186–047.

c. *Date Filed:* August 31, 2012, and supplemented December 19, 2012, and January 17, 2013.

d. *Applicant:* Missisquoi Associates.

e. *Name of Project:* Sheldon Springs Hydroelectric Project.

f. *Location:* Franklin County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Kevin Webb, Hydro Licensing Manager, Missisquoi Associates, One Tech Drive, Suite 220, Andover, MA, 01810, (978) 681–1900 ext. 809.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* February 4, 2013.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site 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* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–7186–047) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Missisquoi Associates requests Commission approval to allow its affiliate, EGP Solar 1, LLC, to construct and maintain a 2.2 megawatt solar photovoltaic system on approximately 12 acres of land within the project boundary of the Sheldon Springs project. The solar array would be constructed on both sides of Heather Lane (the project's access road), but public access through the site on Heather Lane would remain unobstructed. The majority of the area proposed to be used for the solar array is currently devoid of trees, although some grading and tree cutting is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–7186) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received

on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 18, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–01613 Filed 1–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EI13–39–000, QF11–32–001, QF11–33–001]

Grouse Creek Wind Park, LLC, Grouse Creek Wind Park II, LLC; Notice of Petition for Enforcement

Take notice that on January 15, 2013, pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Grouse Creek Wind Park, LLC and Grouse Creek Wind Park II, LLC filed a Petition for Enforcement, requesting the Federal Energy Regulatory Commission (Commission) to initiate enforcement action against the Idaho Public Utilities Commission to ensure that PURPA regulations are properly and lawfully implemented.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of 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 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on February 4, 2013.

Dated: January 18, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–01610 Filed 1–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14462–000]

Ceresco Hydroelectric Dam, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 19, 2012, Ceresco Hydroelectric Dam, LLC, 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 Ceresco Hydroelectric Project (Ceresco Project or project) to be located on Kalamazoo River, near Ceresco, Calhoun County, Michigan. 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.

From the right to the left embankment, the proposed project would consist of the following: (1) A 190-acre surface area, 2,000 acre-feet capacity reservoir at the proposed normal pool elevation of 876.8 feet National Geodetic Vertical Datum; (2) a dam comprised of (a) a 126-foot-wide, 13-foot-high straight drop stoplog spillway composed of six 20.5-foot-long bays; (b) a 51-foot-wide, 10-foot-high gated spillway composed of two 24-foot-wide vertical lift gates; (c) a 36-foot-wide needle embankment section; (d) a 130-foot-wide abandoned powerhouse; and (e) a 130-foot-wide earthen embankment; (3) a 500-kilowatt Very Low Head turbine to be installed just downstream of the two stoplog bays closest to the gated spillway; (4) a 400-foot-long, 480-volt transmission line connecting the project electrical control building on the needle embankment to the Consumers Energy substation on the left abutment; and (5) appurtenant facilities. The estimated annual generation of the Ceresco Project would be 2,500 megawatt-hours.

Applicant Contact: Mr. Daniel Busher, 110 Knapp Dr., Suite 114, Battle Creek, MI 49015; phone: (269) 288–2646.

FERC Contact: Sergiu Serban; phone: (202) 502–6211.

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. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *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* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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–14462) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 18, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–01614 Filed 1–25–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0956; FRL–9773–8]

Public Comment on EPA's National Enforcement Initiatives for Fiscal Years 2014–2016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting public comment and recommendations on national enforcement initiatives to be undertaken in fiscal years 2014–2016. EPA selects these priority areas every three years in order to focus federal resources on the most important environmental problems where noncompliance is a significant contributing factor and where federal enforcement attention can make a difference. For the FY 2011–2013 time period, the U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, has six national enforcement initiatives. These initiatives are (1) Municipal Infrastructure—addressing sewage discharges from combined sewer systems, sanitary sewer systems, and municipal separate storm sewer systems; (2) Mineral Processing—addressing hazardous waste at phosphoric acid facilities and high risk mineral processing sites; (3) New Source Review—controlling emissions from coal fired utility sector, cement plants, glass plants, and acid production plants; (4) Air Toxics—addressing toxic emissions from high risk facilities by examining leak detection and repair (LDAR), flares, and excess emission sources; (5) Energy Extraction—addressing land-based natural gas extraction facilities, including corporate-wide evaluations; and (6) Concentrated Animal Feeding Operations—addressing animal waste discharges from large animal feeding facilities. For more information on the current initiatives, full descriptions can be found on our Web site: *http://www.epa.gov/compliance/data/planning/initiatives/index.html.*

In addition to these sector-based approaches, EPA could choose to focus a national initiative on a strategic area that would improve the Agency's ability to conduct its enforcement and compliance program. For example, EPA is investing in a new approach called Next Generation Compliance to dramatically improve compliance by, among other things, employing advances in emissions monitoring and information technology; expanding transparency by making information publicly available. This availability of information will empower communities to play an active role in compliance oversight and improve the performance of both the government and regulated entities.

The public is invited to comment on extending the current six national enforcement initiatives for the 2014–2016 cycle. The public is also invited to propose new sectors or other important strategic areas for consideration. Commenters should keep in mind the Agency's resource constraints, given that final decisions will need to consider the Agency's funding level. Final selection will be incorporated into the EPA Office of Enforcement and Compliance Assurance Final National Program Manager Guidance (that provides national program direction for all EPA regional offices) to be released in the Spring 2013. EPA will consider these comments as it moves forward in the decision-making process, but will not respond to all comments received.

DATES: Comments must be received on or before February 27, 2013.

ADDRESSES: Information in support of this Notice of Public Comment is available via the Internet at: *http://www.epa.gov/compliance/data/planning/initiatives/index.html.*

Submit your comments via *www.regulations.gov*, identified by Docket ID No. EPA–HQ–OECA–2012–0956. Follow the on-line instructions for submitting comments.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2012–0956. 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.* The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Michele McKeever, Branch Chief, National Planning and Measures Branch, Office of Enforcement and Compliance Assurance, Mail Code: M2221A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–3688; fax number: 202–564–0027; email address: *McKeever.Michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What are EPA enforcement and compliance national enforcement initiatives?

EPA is voluntarily soliciting public comment and recommendations on national enforcement initiatives to be undertaken in fiscal years 2014–2016. EPA selects these initiatives every three years in order to focus federal resources on the most important environmental problems where noncompliance is a significant contributing factor and where federal enforcement attention can make a difference. Sector-based enforcement and compliance national enforcement initiatives are selected according to three criteria: (1) Environmental impact; (2) significant noncompliance; and (3) appropriate federal role. The national enforcement initiatives do not impose any legally binding requirements on any outside parties. EPA will also consider strategic program areas that are not sector-based as potential national enforcement initiatives. These areas include programs such as Next Generation Compliance (e.g., increasing use of advanced emissions monitoring, expanding transparency by increasing

data availability, and developing more effective regulations).

II. On what is EPA requesting comment?

EPA's Office of Enforcement and Compliance Assurance is collecting external comment on the current set of national enforcement initiatives and whether there are other new enforcement initiatives or strategic directions of national significance and warranting federal enforcement attention that should be considered. For example, in addition to considering traditional sector-based approaches, EPA is considering broadening the scope of a national enforcement initiative to include innovative programs, such as Next Generation Compliance, where the Agency feels the application of enforcement program resources would help address critical issues. Examples of Next Generation Compliance strategies include moving away from paper reporting to electronic reporting, incorporating compliance drivers into regulations, using advanced environmental monitoring technologies, and increasing transparency by making data more readily accessible. The public is invited to propose any other areas for consideration, keeping in mind the Agency's resource constraints. Please note that some current national enforcement initiatives may be carried forward or refined and continued into FY 2014–2016.

III. Can the deadline for comments be extended?

No. EPA issues National Program Manager Guidance (NPM Guidance) to enable EPA, states, and federally-recognized Indian tribes (tribes) to effectively align their joint implementation of environmental laws to achieve mutual goals. The NPM guidance must be timely released for state, tribal, and public comment in order to allow the states and tribes with approved programs to consider the NPM Guidance fully in their annual planning processes. These processes direct state and tribal resources according to their fiscal calendars. As a result, EPA must receive public comments by February 27, 2013 in order to make national enforcement initiative selections in keeping with this schedule.

Dated: January 18, 2013.

Lisa Lund,

Director, Office of Compliance.

[FR Doc. 2013–01706 Filed 1–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number EPA–HQ–OECA–2013–0042; FRL–9774–2]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding AboveNet Communications, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a Consent Agreement with AboveNet Communications, Inc. to resolve violations of the Clean Water Act (CWA) and the Emergency Planning and Community Right-to-Know Act (EPCRA), and their implementing regulations.

The Administrator is hereby providing public notice of this Consent Agreement and proposed Final Order (CAFO), and providing an opportunity for interested persons to comment on the CWA and EPCRA portions of this Consent Agreement, as required by CWA Section 311(b)(6)(C).

DATES: Comments are due on or before February 27, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2013–0042, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: docket.oeca@epa.gov,* Attention Docket ID No. EPA–HQ–OECA–2013–0042.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OECA–2013–0042.
- *Mail:* Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OECA–2013–0042.
- *Hand Delivery:* Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2013–0042. 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.* The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the

Enforcement and Compliance Docket is (202) 566–1927.

FOR FURTHER INFORMATION CONTACT: Sanda Howland, Special Litigation and Projects Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: (202) 564–5022; fax: (202) 564–9001; email: *howland.sanda@epa.gov.*

I. Background

This settlement agreement is the result of voluntary disclosures by AboveNet Communications, Inc., (AboveNet) to the Special Litigation and Projects Division (SLPD) in the Office of Civil Enforcement of potential EPCRA Sections 311 and 312 reporting violations and CWA violations related to Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements. AboveNet, a telecommunications company organized under the laws of the state of Delaware and located at 360 Hamilton Avenue, White Plains, NY 10601, disclosed these potential violations pursuant to EPA's *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), 65 FR 19,618 (April 11, 2000).

EPA determined that AboveNet's disclosures satisfied all the conditions set forth in the Audit Policy, and therefore qualify for a 100% reduction of the civil penalty's gravity component. Pursuant to the settlement agreement, EPA proposes to waive the gravity based penalty. AboveNet will pay a civil penalty in the amount of $19,024.00, which is the amount of the economic benefit gained by AboveNet attributable to its delayed compliance with the CWA and EPCRA. EPA and AboveNet negotiated an administrative Consent Agreement in accordance with EPA's Consolidated Rules of Practice, 40 CFR part 22, specifically 40 CFR 22.13(b) and 22.18(b) (*In the Matter of AboveNet Communications, Inc.,* Docket Nos. CWA–HQ–2012–8000, EPCRA–HQ–2012–8000). This Consent Agreement is subject to public notice and comment under CWA Section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

AboveNet violated CWA Section 311(j), 33 U.S.C. 1321(j), and the regulations found at 40 CFR part 112, because it failed to prepare and implement SPCC plans for the 4 facilities listed below. As authorized by CWA Section 311(b)(6), 33 U.S.C. 1321(b)(6), EPA has assessed a civil penalty for these violations.

	Site/building code	Address	City	State
1	DC–21M	2100 M Street NW., Suite P110	Washington	DC.
2	IL–52R	5201 Rose Street	Chicago	IL.
3	MA–SUM	1 Summer Street	Boston	MA.
4	PA–401	401 N. Broad Street, Suites 240 & 323	Philadelphia	PA.

Under CWA Section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA Section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $177,500 by EPA. Class II proceedings under CWA Section 311(b)(6) are conducted in accordance with 40 CFR part 22.

AboveNet also violated EPCRA Section 311, 42 U.S.C. 11021, and the regulations found at 40 CFR part 370, when it failed to submit a Material Safety Data Sheet (MSDS) for a hazardous chemical(s) or, in the alternative, a list of such chemicals, at 48 facilities for varying lengths of time between 2007 and 2011. EPA, as authorized by EPCRA Section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

AboveNet also violated EPCRA Section 312, 42 U.S.C. 11022, and the regulations found at 40 CFR part 370, when it failed to prepare and submit emergency and chemical inventory forms to the Local Emergency Planning Commission (LEPC), the State Emergency Response Commission (SERC), and/or the fire department with jurisdiction over 48 facilities listed in Attachment A for varying lengths of time between 2007 and 2011. EPA, as authorized by EPCRA Section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations. Attachment A to the proposed CAFO lists the 48 telecommunications facilities in violation of EPCRA Sections 311 and 312.

Under EPCRA Section 325, 42 U.S.C. 11045, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right-to-know requirements, or any other requirement of EPCRA. Proceedings under EPCRA Section 325 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a CWA Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is February 27, 2013. All comments will be transferred to the Environmental Appeals Board (EAB) of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA Section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

List of Subjects

Environmental protection.

Dated: December 14, 2012.

Andrew Stewart,

Acting Division Director, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 2013–01708 Filed 1–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9773–7]

Operating Industries, Inc. Superfund Site, Monterey Park, CA; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i) and Section 7003(d) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. 6973, notice is hereby given of a proposed administrative settlement with 47 *de minimis* settling parties for recovery of response costs concerning the Operating Industries, Inc. Superfund Site in Monterey Park, California. The settlement is entered into pursuant to Section 122(g) of CERCLA, 42 U.S.C.

9622(g) and it requires the settling parties to pay $1,624,928 to the United States Environmental Protection Agency (Agency). The settlement includes a covenant not to sue the settling parties pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a), and Section 7003(d) of RCRA, 42 U.S.C. 6973. For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Pursuant to Section 122(i)(1) of CERCLA and Section 7003(d) of RCRA, EPA will receive written comments relating to this proposed settlement for thirty (30) days following the date of publication of this Notice. Pursuant to Section 7003(d) of RCRA, commenters may request an opportunity for a public meeting in the affected area. If EPA receives a request for a public meeting within thirty (30) days following the publication of this Notice, EPA will hold a public meeting at a date and location to be determined.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region IX, 75 Hawthorne Street, San Francisco, California. A copy of the proposed settlement may be obtained from Keith Olinger, EPA Region IX, 75 Hawthorne Street, SFD–7–5, San Francisco, CA 94105, telephone number 415–972–3125. Comments should reference the Operating Industries, Inc. Superfund Site in Monterey Park, California and EPA Docket No. 2011–06 and should be addressed to Keith Olinger at the above address.

FOR FURTHER INFORMATION CONTACT: Janet Magnuson, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3887; fax: (417) 947–3570; email: *magnuson.janet@epa.gov*.

Dated: January 14, 2013.

Jane Diamond,

Director, Superfund Division, U.S. EPA, Region IX.

Parties to the Proposed Settlement: American Marble & Onyx Company, Inc., Arroyo Car Wash Corporation, Bay Cities Container Corporation, Brett's Incorporated, C.E. Encell Auto Parts Service, Inc., Cal-Chem Cleaning Co., Inc., Canplas, LLC, Consumers Oil Company, Cormier Chevrolet Company, Corradini Corp., fka A. Corradini & Sons, aka Corradini Corporation, George J. Peckham, Jr., H.W. Hull & Sons, Inc., Hacienda Car Wash, Inc., Hiro's Transmission, Inc., International Paper Company, International Transportation Service, Inc., John Crane, Inc., Koosed Enterprises, Inc., Los Feliz Car Wash, Margus Auto Electric Exchange, Inc., Midway Drilling & Pump Company, MK Diamond Products, Inc., National Aeronautics and Space Administration, National Credit Corporation, North Hills Car Wash Company, Oil Well Service Company, Pacific Coast Drum Company, Pentair, Inc., Porcelain Metals Corporation, R.R. Kellogg, Inc., Ralphs Grocery Company, RCG Electronics Corp., dba Washington Caterers, Resco Holdings, LLC, Ryder System, Inc., Solar Turbines International Company, Standard Graphics Arts Corporation, Talley Brothers, Inc., Trans Harbor, Inc., Treasure-Craft, V & M Precision Grinding Co., V–M Enterprises, Inc., Valeant Pharmaceuticals International, Valley Proteins (DE), Inc., Vernon Sanitation Supply Co., Inc., Western & Fourth Car Wash, Inc., Westwood Car Wash, Wyeth, LLC.

[FR Doc. 2013–01593 Filed 1–25–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2013–0106]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB Review and Comments Request.

Form Title: EIB 92–31 Notification by Insured of Amounts Payable Under Multi-Buyer Export Credit Insurance policy (Standard Assignment).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This form represents the exporter's directive to Ex-Im Bank to whom and where the insurance proceeds should be sent. The forms are typically part of the documentation required by financial institution lenders in order to provide financing of an exporter's foreign accounts receivable. Foreign accounts receivable insured by Ex-Im Bank represent stronger collateral to secure the financing. By recording which policyholders have completed this form, Ex-Im Bank is able to determine how many of its exporter policyholders require Ex-Im Bank insurance policies to support lender financing. The application can be reviewed at: *www.exim.gov/pub/pending/eib92–31.pdf* Single Buyer Export Credit Insurance Policy.

DATES: Comments should be received on or before March 29, 2013 to be assured of consideration.

ADDRESSES: Comments maybe submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Arnold Chow, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–31 Notification by Insured of Amounts Payable Under Multi-Buyer Export Credit Insurance policy (Standard Assignment).

OMB Number: 3048–XXXX.

Type of Review: New.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Annual Number of Respondents: 150.

Estimated Time per Respondent: 1 hour.

Frequency of Reporting or Use: Annually.

Government Review Time: 1 hour.

Total Hours: 150 hours.

Cost to the Government: $4,875.00.

Benefits and Overhead: 28%.

Total Government Cost: $6,240.00.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2013–01651 Filed 1–25–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, January 31, 2013 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of the Minutes for the Meeting of December 20, 2012

Draft Advisory Opinion 2012–39: Green Party of Virginia
Draft Interpretive Rule on Itemizing Ultimate Payees of Committee Disbursements
Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2013–01866 Filed 1–24–13; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* 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 part 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 March 29, 2013.

ADDRESSES: You may submit comments, identified by *FR 2034* by any of the following methods:

- *Agency Web Site: www.federalreserve.gov.* Follow the instructions for submitting comments at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the OMB control 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 *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.,) 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 by mail to the Office of Information and Regulatory Affairs, U.S. 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: *www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, 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; and

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.

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Extend, With Revision, Under OMB Delegated Authority, the Following Survey

Report title: Senior Credit Officer Opinion Survey on Dealer Financing Terms.

Agency form number: FR 2034.

OMB control number: 7100–0325.

Frequency: Up to six times a year.

Reporters: U.S. banking institutions and U.S. branches and agencies of foreign banks.

Estimated annual reporting hours: 450 hours.

Estimated average hours per response: 3 hours.

Number of respondents: 25.

General description of report: This information collection would be voluntary (12 U.S.C. 225a, 248(a)(2), 1844(c), and 3105(c)(2)) and would be given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This voluntary survey collects qualitative and limited quantitative information from senior credit officers at responding financial institutions on (1) Stringency of credit terms, (2) credit availability and demand across the entire range of securities financing and over-the-counter derivatives transactions, and (3) the evolution of market conditions and conventions applicable to such activities up to six times a year. Given the Federal Reserve's interest in financial stability, the information this

survey collects is critical to the monitoring of credit markets and capital market activity. Aggregate survey results are made available to the public on the Federal Reserve Board Web site.[1] In addition, selected aggregate survey results may be published in *Federal Reserve Bulletin* articles and in the annual Monetary Policy Report to the Congress.

Current Actions: The survey instrument currently contains 47 core questions divided into three broad sections, as well as additional questions on special topics of timely interest. The Federal Reserve proposes to modify the survey instrument to contain 79 core questions that would be substantively similar to the current survey while instituting some reorganization and refinements: (1) More granular information on dealers' clients would be added to the Counterparty Types section; (2) the number of questions in Over-the-Counter Derivatives section would be significantly reduced; and (3) questions on additional collateral types would be added to the Securities Financing section.

Board of Governors of the Federal Reserve System, January 23, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–01677 Filed 1–25–13; 8:45 am]

BILLING CODE 6210–01–P

[1] See *http://www.federalreserve.gov/econresdata/releases/scoos.htm.*

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 February 22, 2013.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Murphy-Wall Bancorp, Inc.,* Pinckneyville, Illinois, to acquire 100 percent of the voting shares of Elkville State Bank, Elkville, Illinois

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Eagle Bancshares, Inc.,* Eagle, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Eagle State Bank, Eagle, Nebraska.

Board of Governors of the Federal Reserve System, January 23, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–01676 Filed 1–25–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 2013.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. 4830 Acquisition Company, LLC, to become a bank holding company by acquiring 100 percent of the voting shares of Southern Commerce Bank, National Association, both in Tampa, Florida.

Board of Governors of the Federal Reserve System, January 22, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–01617 Filed 1–25–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities

will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 2013.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Bay-Vanguard, MHC,* and *BV Financial, Inc.,* both in Sparrow Point, Maryland; to acquire 100 percent of the voting shares of Vigilant Federal Savings Bank, Essex, Maryland.

Board of Governors of the Federal Reserve System, January 23, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–01675 Filed 1–25–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: HHS–EGOV–18380–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Electronic Government Office; Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Electronic Government Office (EGOV), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 4040–0001, which expires on March 31, 2013. The ICR also requests categorizing the form as a common form, meaning HHS will only request approval for its own use of the form rather than aggregating the burden estimate across all Federal Agencies as was done for previous actions on this OMB control number. Prior to submitting that ICR to OMB, EGOV seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before March 29, 2013.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–EGOV–18380–60D for reference.

Information Collection Request Title: SF–424 Research & Related (R&R).

OMB No.: 4040–0001.

Abstract: The SF–424 Research & Related Information Collection is an information collection comprised of a set of standardized forms used for grant applications to research-based agencies.

Need and Proposed Use of the Information: The SF–424 R&R is used by the public to apply for Federal financial assistance in the forms of grants. These forms are submitted to the Federal grant-making research-based agencies for evaluation and review.

Likely Respondents: Organizations and institutions seeking research-based grants.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

HHS estimates that the SF–424 Research and Related form will take 1 hour to complete. We expect that 128,378 respondents will use this form.

Once OMB approves the use of this common form, federal agencies may request OMB approval to use this common form without having to publish notices and request public comments for 60 and 30 days. Each agency must account for the burden associated with their use of the common form.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
SF–424 Research and Related Application for Federal Assistance	128,378	1	1	128,378
Total	128,378	1	1	128,378

EGOV specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2013–01622 Filed 1–25–13; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Evaluating the Knowledge and Educational Needs of Students of Health Professions on Patient-Centered Outcomes Research.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by March 29, 2013.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluating the Knowledge and Educational Needs of Students of Health Professions on Patient-Centered Outcomes Research

AHRQ's Effective Health Care Program, which was authorized by Section 1013 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, 42 U.S.C. 299b–7, is the Federal Government's first program to conduct patient-centered outcomes research (PCOR) and share the findings with the public. PCOR is research that assesses the benefits and harms of preventive, diagnostic, therapeutic, palliative or health delivery system interventions. This research helps clinicians, patients and other caregivers make decisions about health care choices by highlighting comparisons and outcomes that matter to people, such as survival, function, symptoms, and health related quality of life. The Program funds individual researchers, research centers, and academic organizations to work together with the Agency to produce effectiveness and comparative effectiveness research.

The Effective Health Care Program also translates research findings into a variety of products for diverse stakeholders. These products include summary guides for clinicians, patients/consumers, and policy-makers, continuing education modules and faculty slide sets for clinicians, patient decision aids, and audio and video podcasts.

Most of the PCOR materials and translation products that are currently available are designed to help practicing clinicians, consumers/patients, and policymakers in making important decisions about health care. AHRQ recognizes the importance of insuring that clinicians in training are also exposed to PCOR and that they fully understand their role and value in shared clinical decision making. AHRQ and the Effective Health Care Program have started developing some tools, such as faculty slide sets based on comparative effectiveness reviews of the literature, to reach this audience through traditional clinical curricula. However, exposure to PCOR may occur and even be more effective in more non-traditional extracurricular settings, such as special interest projects created and sponsored by student groups or even Web-based events involving social media.

This evaluation study addresses AHRQ's need for a report to inform strategic planning for dissemination and educational activities targeted to clinicians in training. The evaluation is intended to assess students' and faculties' needs and preferences for integrating PCOR into the health professions' curricula, learning environment, and other training opportunities through a series of structured interviews with selected faculty members and an online survey directed at students in the health professions. The outcome will be a roadmap, which will include a set of recommendations for strategies and tools for educational and dissemination activities, along with a suggested approach and timeline for implementation of the recommendations. The recommendations will inform AHRQ's strategic plan for future efforts which will engage and develop information and materials for the health professions student audience.

The goals of this project are to:

(1) Understand the extent to which PCOR is currently integrated into the curriculum and how it is disseminated to students in the health professions.

(2) Understand health professions students' attitudes toward and knowledge of PCOR.

(3) Explore differences in health professions student experiences with PCOR by health profession.

(4) Identify informational and training needs and preferences of health professions students in primary care-oriented training programs.

This study is being conducted by AHRQ through its contractor, James Bell Associates, pursuant to (1) 42 U.S.C. 299b–7, (2) AHRQ's authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services, 42 U.S.C. 299a(a)(1), and (3) AHRQ's authority to support the synthesis and dissemination of available scientific evidence for use by patients, consumers, practitioners, providers, purchasers, policy makers, and educators, 42 U.S.C. 299(b)(2).

Method of Collection

To achieve these goals the following data collections will be implemented:

(1) Student Survey. The purpose of the survey is to assess health professions students' attitudes toward and knowledge of PCOR, the extent to which they value PCOR, what they would like to know, and how they would prefer to receive this information now and as they move into clinical practice.

(2) Faculty Interview. The faculty interview will focus on gaining an understanding of where PCOR fits into the current curriculum for each health professions field; how both the philosophy and substantive findings of PCOR information are disseminated to instructors and subsequently to students; and perceived gaps and suggested strategies for filling these gaps.

Data will be gathered through structured interviews of faculty in health professions programs and a broad web-based survey of a cross-section of health professions students. The outcome from the project will be used immediately and directly by AHRQ's Office of Communications and Knowledge Transfer (OCKT) staff to guide strategic planning for addressing the educational needs of health professions students. Subsequent activities may include, but are not limited to, modifying specific information about PCOR and developing novel approaches to providing information on PCOR as determined by the student survey responses. This information will also help guide the determination of the AHRQ OCKT resource needs.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. Faculty interviews will be conducted with 24 faculty members and

will last about one hour. The student survey will include 1,800 students and takes 10 minutes to complete. The total burden is estimated to be 324 hours annually.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be $4,790 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total
Faculty Interview	24	1	1	24
Student Survey	1,800	1	10/60	300
Total	1,824	Na	Na	324

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Faculty Interview	24	24	$47.70	$1,145
Student Survey	1,800	300	12.15	3,645
Total	1,824	324	Na	4,790

* Based on the mean wages for Health Specialties Teachers, Postsecondary (25–1071; 47.70/hour) and Teacher Assistants (25–9041; $12.15/hour. Many of the students will be teaching and research assistants, making this the best occupational code for them), National Compensation Survey: Occupational wages in the United States May 2011, "U.S. Department of Labor, Bureau of Labor Statistics." *http://www.bls.gov/oes/current/oes_nat.htm#25-0000.*

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost to the Federal Government for conducting this research. The total cost to the Federal Government is $683,335. The total annualized cost is estimated to be approximately $341,667. The total annual costs include the questionnaire development, administration, analysis, and study management.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$144,707	$72,353
Data Collection Activities	283,667	141,833
Data Processing and Analysis	135,523	67,762
Publication of Results	9,012	4,506
Project Management	65,722	32,861
Overhead	44,704	22,352
Total	683,335	341,667

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 16, 2013.

Carolyn M. Clancy,

Director.

[FR Doc. 2013–01342 Filed 1–25–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Applying Novel Methods To Better

Understand the Relationship Between Health IT and Ambulatory Care Workflow Redesign.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by March 29, 2013.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Applying Novel Methods To Better Understand the Relationship Between Health IT and Ambulatory Care Workflow Redesign

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for the project ''Applying Novel Methods To Better Understand the Relationship Between Health IT and Ambulatory Care Workflow Redesign.'' The data to be collected consists of interviews and focus groups with clinical, non-clinical, and management staff about their experiences with new health information technology (IT) in an ambulatory care facility. The overall goal of this study is to characterize the relationship between health IT implementation and health care workflow in six (6) small and medium-sized ambulatory care practices implementing patient-centered medical homes (PCMH), with a focus on the influence of behavioral and organizational factors and the effects of disruptive events.

AHRQ is a lead Federal agency in developing and disseminating evidence and evidence-based tools on how health IT can improve health care quality, safety, efficiency, and effectiveness. Health IT has been widely viewed as holding great promise to improve the quality of health care in the U.S. Health IT can improve access to information for both patients and providers, empowering patients to become involved in their own self-care. Increased patient safety can result from health IT when records are shared, medications are reconciled, and adverse event alerts are in place. When health IT improves efficiency, providers can spend more time directly caring for patients, ultimately improving the quality of care patients receive.

In redesigning an ambulatory office practice as a patient-centered medical home (PCMH), health IT is intended to allow for a seamless and organized flow of information among providers. The health IT system is critical, because under the PCMH model, a team of clinicians aims to provide continuous and coordinated care throughout a patient's lifetime.

Unfortunately, health IT systems can fail to generate anticipated results and even carry unintended consequences which undermine usability and usefulness. Directly or indirectly, health IT may create more work, new work, excessive system demands, or inefficient workflow (the sequence of clinical tasks). Electronic reminders and alerts may be timed poorly. Software may require excessive switching between screens, leading to cognitive distractions for end users. Providers may spend more time on health IT system-related tasks than on direct patient care.

The literature also suggests that the ambulatory health care environment is full of unpredictable yet frequently occurring events requiring actions that deviate from normal practice. Unpredictable events such as interruptions requiring a provider's immediate attention, or disruptions in the normal functioning of the health IT system (exceptions) divert health care workers from the usual course of workflow. The inability of health IT to properly accommodate these events could cause compromises to clinical work.

Because of adverse, unintended and disruptive consequences, developing an understanding of how health IT implementation alters clinical work processes and workflow is crucial. Unfortunately, research is scarce, and methods of investigation vary widely. Empirical evidence of health IT's impact on clinical workflow has been ''anecdotal, insufficiently supported, or otherwise deficient in terms of scientific rigor'' (Carayon and Karsh, 2010).

This study aims to examine more systematically the impact of health IT on workflow in six (6) small and medium-sized ambulatory care practices varying in their characteristics but all implementing PCMH. All of the practices will be in the process of implementing a new health IT system during the course of the study, but some may have an existing, baseline system such as an electronic health record system. The focus of the study will be on the new systems being implemented. It will employ the complementary quantitative and qualitative methods of previous research. The combination of methods produces quantitative results and allows validation through observation and solicitation of qualitative participant opinions.

The specific goals of this study are to identify (1) the relationship between health IT implementation and ambulatory care workflow; (2) the behavioral and organizational factors and the role they play in mitigating or augmenting the impact of health IT on workflow; and (3) how the impacts of health IT are magnified through disruptive events such as interruptions and exceptions.

This study is being conducted by AHRQ through its contractor, Billings Clinic, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to clinical practice, including primary care and practice-oriented research. 42 U.S.C. 299a(a)(1) and (4).

Method of Collection

To achieve the goals of this project the following data collection will be implemented:

(1) *Mapping of Study Practices.* This activity will detect any changes made to the physical layout as a result of implementing PCMH and health IT. Practices will be mapped at the beginning of the study and maps will be updated as needed. Recording this information will not burden the clinic staff and is not included in the burden estimates.

(2) *Staff Observation.* Clinicians (physicians, nurse practitioners, physician assistants, nurses, medical assistants, pharmacists, and case managers) and non-clinical office personnel will be observed to delineate the overall characteristics of clinical workflow before, during, and after health IT implementation. Particular attention will be paid to interruptions and exceptions. If necessary and if the situation allows, observers will as unobtrusively as possible ask clinic staff to clarify certain observed actions. Recording this information will not

burden the clinic staff and is not included in the burden estimates.

(3) *Before—After Time and Motion Study.* This activity quantifies staffs time expenditures on different clinical activities and delineates the sequence of task execution. It will be conducted before and after health IT implementation. This data will be collected by observation only. Recording this information will not burden the clinic staff and is not included in the burden estimates.

(4) *Extraction of Clinical Data.* Logs, audits trails, and time-stamped clinical data will be extracted from the health IT system to reconstruct clinical workflow related to the health IT system. This information validates and supplements the data recorded by human observers. Extracting this data will not burden the clinic staff and is not included in the burden estimates.

(5) *Semi-Structured Interviews.* This data collection will be conducted post-health IT implementation to solicit attitudes and perceptions by health IT end users including clinical staff, non-clinical personnel, and management regarding how health IT has changed their workflow. Particular attention will be paid to behavioral and organizational factors.

(6) *Focus Group.* A focus group will be conducted post-health IT implementation with the clinical staff, non-clinical personnel, and management team to ensure the research findings, as well as the interpretation of the findings, accurately reflect their experiences using health IT.

On-site data collection will be conducted over a 5-day period during each of three phases. Pre-implementation data collection activities will be conducted prior to user training. During-implementation data collection will begin when staff are instructed to start using the health IT system. Post-implementation data collection will be conducted approximately 3 months after implementation at each study practice.

The qualitative study components of this project, namely staff observations, semi-structured interviews, and focus groups, will generate qualitative data in the form of observation notes and interview transcripts. The time-and-motion study and the electronic clinical data will produce quantitative information in the form of sequences of clinical activities and information about the duration, location, and performer of each action. Mapping will create annotated floor plans delineating the physical layout of each study clinic, which will be incorporated in the collection and analysis of the data of the other study components.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annual burden hours for participation in this study. The semi-structured interview will be completed by 60 respondents across the 6 clinics (10 per practice) and requires one hour. Sixty (60) clinic staff members will be asked to participate in the focus group across all 6 clinics (10 per practice). The focus group requires no more than 45 minutes. The total annual burden is estimated to be 105 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this research. The total annual burden is estimated to be $5,505.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Semi-Structured Interview	60	1	1	60
Focus Group	60	1	45/60	45
Total	120			105

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Semi-Structured Interview	60	60	$55	$3,300
Focus Group	60	45	49	2,205
Total	120	105		5,505

* Based upon the mean of the average wages, National Compensation Survey. Occupational wages in the United States July 2010, U.S. Department of Labor, Bureau of Labor Statistics, *http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf*. For the semi-structured interviews, hourly wage is an average including 2 physicians or surgeons ($85.67), 1 registered nurse ($32.42), 2 non-physician providers (measured here as physician assistants, $43.44), and 1 senior administrator (measured here as "Medical and health services managers," $42.28). For focus groups, 3.34 physicians or surgeons ($85.67), 1.66 non-physician providers (measured here as physician assistants, $43.44), 3.34 registered nurses ($32.42), and 1.66 medical assistants ($14.46).

Estimated Annual Costs to the Federal Government

The total cost of this study is $799,014 over a 36-month time period from June 1, 2012 through May 31, 2015 for an annualized cost of $266,338. (Because the project entails gathering data before, during, and after health IT implementation, a period of 21 months is planned for data collection.) Exhibit 3 provides a breakdown of the estimated total and average annual costs by category.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$135,759	$45,253
Data Collection Activities	177,460	59,153

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST—Continued

Cost component	Total cost	Annualized cost
Data Processing and Analysis	239,426	79,809
Publication of Results	51,779	17,260
Project Management	67,729	22,576
Overhead	126,861	42,287
Total	799,014	266,338

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 16, 2013.

Carolyn M. Clancy,

Director.

[FR Doc. 2013–01345 Filed 1–25–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

AHRQ Standing Workgroup for Quality Indicator Measure Specification

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for nominations.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking nominations for both a time-limited work group and a standing work group to be convened by an AHRQ contractor. The work groups shall be comprised of individuals with knowledge of the AHRQ Quality Indicators (QIs), their technical specifications, and associated methodological issues. The overarching goals of each group are to provide feedback to AHRQ regarding refinements to the QIs. The time-limited workgroup is more restricted to specific clinical or methodological issues, while the standing workgroup addresses broader issues related to the measurement cycle.

DATES: Please submit nominations on or before March 15, 2013. Self-nominations are welcome. Third-party nominations must indicate that the individual has been contacted and is willing to serve on the workgroup. Selected candidates will be contacted by AHRQ no later than April 5, 2013. Please include the committee of interest. Candidates may apply for both.

ADDRESSES: Nominations can be sent in the form of a letter or email, preferably as an electronic file with an email attachment, and should specifically address the submission criteria as noted below. Electronic submissions are strongly encouraged. Responses should be submitted to: ATTN: Pamela Owens, Agency for Healthcare Research and Quality, Center for Delivery, Organization and Markets, 540 Gaither Road, Rockville, MD 20850, Email: *pam.owens@AHRQ.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela Owens, Ph.D., Senior Research Scientist, Agency for Healthcare Research and Quality, Center for Delivery, Organization and Markets, 540 Gaither Road, Rockville, MD 20850, Email: *pam.owens@AHRQ.hhs.gov;* Phone: (301) 427–1412; Fax: (301) 427–1430.

SUPPLEMENTARY INFORMATION: These workgroups are being administered by AHRQ's contractor as part of a structured approach to formally and broadly engage stakeholders, and to enhance and expand transparency about the scientific development of the AHRQ QIs.

Time-Limited Work Group

Time-limited workgroups are formative in nature, providing feedback on significant measure improvement issues and representing a broad range of stakeholders. The focus for this upcoming year will be the Prevention Quality Indicators (PQI). The role of time-limited group members is to: (1) Provide technical guidance on the PQI specifications and rationales, risk adjustment strategies, and other quality measurement issues; (2) provide input on critical information gaps, as well as research methods to address them; (3) provide guidance on draft recommendations for the PQI measure refinements; (4) offer scientifically rigorous recommendations for the evaluation and validation efforts required to ensure the accuracy of the PQIs; and, (5) provide input on and review of the contractor's technical report resulting from the workgroup's discussions.

The time-limited workgroup will consist of 8–12 members consisting of:

- One or more statisticians specialized in the relevant statistical methods and applications
- One or more individuals with expertise in community health care and prevention, and access to and quality of care
- One or more individuals with experience using AHRQ PQI measures for assessing health system performance and public reporting
- One or more individuals with expertise in developing algorithms using ICD–9–CM codes to construct or modify quality indicators using administrative data is desirable, but not mandatory

In addition, the work group is expected to include representatives from impacted provider groups and their professional organizations, other stakeholders, consumers and other users, quality alliances, medical or specialty societies, measure developers, accrediting organizations, and public and private payers.

Standing Work Group

The standing workgroup is part of a structured approach to bring together individuals from multiple disciplines for the purpose of providing technical feedback on proposed updates to the AHRQ QIs. The intent is to collect

feedback in a standardized fashion, and to ensure continued improvement of key measurement aspects of the QIs based on new data sources, data enhancements, and methodological advances. The standing workgroup may potentially provide guidance for the development of new indicators or the modification or retirement of existing indicators. Annual topics include: (1) Strategic areas for AHRQ QI program development for the upcoming year, (2) measure specification, software and documentation changes that have been proposed from users, the literature or other sources, (3) results from the analysis of proposed changes and review of recommendations for implementation, and (4) general methodological developments in quality measurement.

The standing workgroup will consist of a diverse group of clinicians and other individuals from a variety of disciplines and settings with expertise and interest in quality measurement and improvement. Members of the standing workgroup may include:

- One or more currently practicing clinicians specialized in various disciplines
- One or more individuals with inpatient nursing and/or nursing management experience
- One or more individuals with experience using AHRQ QI measures for assessing hospital performance and/or public reporting
- One or more individuals with expertise in developing algorithms for relevant quality indicators using administrative data
- One or more individuals with expertise in validating ICD–9–CM codes using chart abstraction (to assess criterion validity), or assessing their accuracy in identifying individuals at risk for specific adverse outcomes (predictive validity)
- One or more individuals with experience using HCUP or similar data for the purpose of quality measurement
- One or more individuals with knowledge of ICD–9–CM and ICD–10–CM coding guidelines and practices

Submission Criteria

To be considered for membership on either work group, please send the following information for each nominee:

1. A brief nomination letter highlighting experience and knowledge in the use of the AHRQ QIs, including any experience with the National Quality Forum (NQF) Consensus Development Process, and the work group of interest. The nominee's profession and specialty, and the spectrum of his or her experience related to the QIs should be described. Please include full contact information of nominee: Name, title, organization, mailing address, telephone and fax numbers, and email address.
2. Curriculum vita (with citations to any pertinent publications related to quality measure development or use).
3. Description of any financial interest, recent conduct, or current or planned commercial, non-commercial, institutional, intellectual, public service, or other activities pertinent to the potential scope of the workgroup, which could be perceived as influencing the workgroup's process or recommendations. The objective is not to prevent nominees with potential conflicts of interest from serving on the work groups, but to obtain such information so as to best inform the selection of workgroup members, and to help minimize such conflicts.

Nominee Selection Criteria

Selection of standing workgroup members will be based on the following criteria:

- Knowledge of and experience with health care quality measurement using administrative data, including issues of coding, specification, and risk adjustment
- Peer-reviewed publications relevant to developing, testing, or applying health care quality measures based on ICD-coded administrative data
- Knowledge of current quality measurement methodologies published in the literature
- Clinical expertise in the use and applications of the AHRQ QIs
- Knowledge of the NQF measure submission and maintenance process

The selection process will be adapted to ensure that the standing work group includes a diverse group of clinicians and other individuals from a variety of disciplines and settings.

Time Commitment

Time-limited and standing workgroup participants will hold a minimum two year term with an optional extension. The time-limited workgroup will meet by teleconference approximately three times for approximately two hours each in 2013, with a total time commitment of approximately 12 hours. The standing workgroup will meet quarterly by teleconference for approximately two hours with an annual time commitment of approximately 12–15 hours.

Workgroup Activities

1. Workgroup members will receive pre-meeting material to review and to provide written feedback (1.0 hours).
2. The workgroup meeting will be convened by phone or web conference. Initial feedback and revisions will be discussed during the live meetings along with other relevant topics (2.0 hours).
3. Post meeting, members will review and comment on meeting minutes and associated documents along with any follow-up action items (1 hour).
4. There may be opportunities for workgroup members to collaboratively publish peer-reviewed journal articles or reports based on workgroup activities. However, this is not a mandatory requirement of workgroup members and is not included in the 12–15 hours estimated time commitment.

Background

The AHRQ Quality Indicators (AHRQ QIs) are a unique set of measures of health care quality that make use of readily available hospital inpatient administrative data. The QIs have been used for various purposes. Some of these include tracking, hospital self-assessment, reporting of hospital-specific quality or pay for performance. The AHRQ QIs are provider- and area-level quality indicators and currently consist of four modules: The Prevention Quality Indicators (PQIs), the Inpatient Quality Indicators (IQIs), the Patient Safety Indicators (PSIs), and the Pediatric Quality Indicators (PQIs). In response to feedback from the AHRQ QI user community and guidance from NQF, AHRQ is committed to the ongoing improvement and refinement of the QIs in an accurate and transparent manner. For additional information about the AHRQ QIs, please visit the AHRQ Web site at *http://www.qualityindicators.AHRQ.gov*.

Dated: January 16, 2013.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. 2013–01348 Filed 1–25–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Statement of Organization, Functions, and Delegations of Authority

Part J (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 77 FR 68125, dated November 15, 2012) is amended to reflect the reorganization of the Office of

Financial Administrative Services, Office of the Director, Agency for Toxic Substances and Disease Registry.

Section T–B, Organization and Functions, is hereby amended as follows: Delete in its entirety the title for the Office of Financial and Administrative Services (JAA2), Office of the Director (JAA), Agency for Toxic Substances and Disease Registry (JA) and insert the title Office of Financial, Administrative, and Information Services (JAA2), Office of the Director (JAA), Agency for Toxic Substances and Disease Registry (JA).

Revise the functional statement for the Office of Financial, Administrative, and Information Services (JAA2), as follows:

After item (6), insert the following item: (7) enables and supports NCEH/ATSDR data management, systems development, and information security needs.

Dated: January 11, 2013.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2013–01663 Filed 1–25–13; 8:45 am]

BILLING CODE 4160–70–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting of the aforementioned committee:

Times and Dates

8:00 a.m.–5:00 p.m., February 20, 2013, 8:00 a.m.–3:00 p.m., February 21, 2013.

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent ''Oz'' Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines. Further, under provisions of the Affordable Care Act, at section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been adopted by the Director of the Centers for Disease Control and Prevention must be covered by applicable health plans.

Matters To Be Discussed: The agenda will include discussions on: adult immunization, general recommendations, 13-valent pneumococcal conjugate vaccine, influenza, Japanese encephalitis vaccine, pertussis, *Haemophilus influenzae* b (Hib) vaccine, smallpox and vaccine supply. Recommendation votes are scheduled for Hib vaccine, influenza and 13-valent pneumococcal conjugate vaccine. VFC votes are scheduled for *Haemophilus influenzae* b (Hib) vaccine and 13-valent pneumococcal conjugate vaccine. Time will be available for public comment. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Stephanie B. Thomas, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., MS–A27, Atlanta, Georgia 30333, Telephone: (404) 639–8836; Email *ACIP@CDC.GOV.*

Meeting is Web cast live via the World Wide Web; for instructions and more information on ACIP please visit the ACIP Web site: *http://www.cdc.gov/vaccines/acip/index.html.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 22, 2013.

Dana Redford,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–01649 Filed 1–25–13; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 77 FR 65390, dated October 26, 2012) is amended to reflect the reorganization of the Office of the Director, National Center for Environmental Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: Delete in its entirety the title Office of Financial and Administrative Services (CUG14), Office of the Director (CUG1), National Center for Environmental Health (CUG) and insert the title Office of Financial, Administrative, and Information Services (CUG14), Office of the Director (CUG1), National Center for Environmental Health (CUG).

Revise the functional statement for the Office of Financial, Administrative, and Information Services (CUG14), as follows:

After item (6), insert the following item: (7) enables and supports NCEH/ATSDR data management, systems development, and information security needs.

Dated: January 11, 2013.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2013–01660 Filed 1–25–13; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Federal Tax Offset, Administrative Offset, and Passport Denial.

OMB No.: 0970–0161.

The Federal Tax Offset, Administrative Offset, and Passport Denial programs collect past-due child

support by intercepting certain federal payments, including federal tax refunds, of parents who have been ordered to pay child support and who are behind in paying the debt. The program is a cooperative effort among the Department of the Treasury's Financial Management Service, the federal Office of Child Support Enforcement (OCSE), and state child support enforcement (CSE) agencies. The Passport Denial program reports noncustodial parents who owe child support above a threshold to the Department of State, which will then deny passports to these individuals. On an ongoing basis, CSE agencies submit to OCSE the names, Social Security numbers, and the amount(s) of past-due child support of people who are delinquent in making child support payments.

Respondents: State IV–D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
Input Record	54	52	.3	842.4
Output Record	54	52	.46	1291.7
Payment File	54	52	.135	379.1
Certification Letter	54	1	.4	21.6
SSP FCE Processing screens—State and Federal Workers	146	337	.008	393.2
Total				2,928

Estimated Total Annual Burden Hours: 2,928 hours.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–01618 Filed 1–25–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0012]

2013 Assuring Radiation Protection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of the Center for Devices and Radiological Health (CDRH) radiation protection program. The goal of the 2013 Assuring Radiation Protection will be to coordinate Federal, State, and Tribal activities to achieve effective solutions to present and future radiation control problems. The recipient of this cooperative agreement award will be expected to obtain the States' cooperation and participation on committees and working groups established to deal with individual problems. The recipient will also plan and facilitate an annual meeting and develop and offer educational activities to demonstrate mutually beneficial techniques, procedures, and systems relevant to the mission of assuring radiation protection. The recipient will establish committees, in accordance with Federal statutes and regulations, to address, evaluate, and propose solutions for a wide range of radiation health and protection issues. Examples of relevant areas already identified to be of interest include, but are not limited to: (1) The application of x-rays to the healing arts; (2) the application of non-medical ionizing radiation and medical/non-medical non-ionizing radiation; and (3) the control and mitigation of radiation exposure from all sources.

DATES: Important dates are as follows:

1. The application due date is April 1, 2013.
2. The anticipated start date is May 1, 2013.
3. The opening date is January 28, 2013.
4. The expiration date is April 2, 2013.

ADDRESSES: Submit electronic applications to: *http://www.grants.gov/.* For more information, see section III of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT:

R. Matt Erbe, Food and Drug Administration, Center for Devices and Radiological Health, 301–796–5744, FAX: 301–847–8142, *Matthew.Erbe@fda.hhs.gov*;

or

Gladys Melendez Bohler, Food and Drug Administration, Office of Acquisition and Grant Services, 301–827–7175, FAX: 301–827–0505, *gladys.bohler@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://www.grants.gov/.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–13–002

93.103

A. Background

Since 1968, FDA has taken the lead in working with the Nuclear Regulatory Commission (NRC) and its predecessor organizations, the Environmental Protection Agency (EPA), and the

Federal Emergency Management Agency (FEMA), to provide financial support for a forum established to foster the exchange of ideas and information among the States and the Federal Government concerning radiation control. This forum has made it possible for State and Federal Agencies to work together to study existing and potential radiological health problems of mutual interest and to apply their increasingly limited resources with maximum efficiency in seeking ways to address these problems, foster coordination, and provide original views.

Three major mechanisms traditionally have been used to achieve this coordination between State and Federal Agencies:

1. When certain radiation control issues warrant specific consideration, committees and other working groups comprised of representatives of State radiation control programs and liaison members from the concerned Federal Agencies have been formed to evaluate these issues and recommend ways to address them. The recommendations of the committees are evaluated by a central management board and final recommended actions are relayed to the appropriate Federal and State Agencies and Tribal organizations.

2. Annual meetings of Federal and State officials are convened to present and discuss the results of the recommended actions. The annual meetings also include workshops to more carefully define new problems and areas of mutual concern in radiation control, and clinics to demonstrate mutually beneficial radiological health techniques, procedures, and systems. The annual meeting lasts approximately 4 days, with an average attendance of 350 participants.

3. Additional educational activities have been developed and provided for the benefit of members of State programs having radiation control responsibilities and the general public to acquaint them with radiation exposure problems and the proposed solutions. Methods used have included videotapes, publications, and training courses.

B. Research Objectives

The objective of this cooperative agreement will be to coordinate Federal, State, and Tribal activities to achieve effective solutions to present and future radiation control problems. The recipient of this cooperative agreement award will be expected to obtain the States' cooperation and participation on committees and working groups established to deal with individual problems. The recipient will also plan and facilitate an annual meeting, and develop and offer educational activities to demonstrate mutually beneficial techniques, procedures, and systems relevant to the mission of assuring radiation protection. The recipient will establish committees, in accordance with Federal statutes and regulations, to address, evaluate, and propose solutions for a wide range of radiation health and protection issues. Examples of relevant areas already identified to be of interest include, but are not limited to: (1) The application of x-rays to the healing arts; (2) the application of non-medical ionizing radiation and medical/non-medical non-ionizing radiation; and (3) the control and mitigation of radiation exposure from all sources. These areas are explained more fully in the following paragraphs.

1. Areas of Interest

a. *Application of x-rays to the healing arts.* The recipient will address issues related to x-rays in the healing arts including issues related to general diagnostic and therapeutic radiology. Issues related to medical imaging (fluoroscopy and computed tomography) and therapy radiography (linear accelerator or source based therapy) should be considered in terms of practice guidelines, quality assurance procedures, and patient exposure evaluation. In the area of patient exposure, the recipient will be responsible for conducting a survey of a representative sample of medical x-ray facilities conducting one specific diagnostic x-ray procedure (from a set of predefined procedures that will be the subject of the survey over time).

b. *Application of non-medical ionizing radiation and medical/non-medical non-ionizing radiation.* The recipient will address issues in the non-medical applications of ionizing radiation as well as the medical and non-medical applications of non-ionizing radiation.

c. *Control and mitigation of radiation exposure.* The recipient will be responsible for developing criteria relevant to the control and mitigation of radiation exposure from all sources. Specific areas to be addressed include: (1) Responding to radiation accidents or incidents; (2) evaluating the adequacy of State radiation control programs; overseeing radiation laboratory capabilities; (3) controlling residual radioactivity levels from decontamination and decommissioning of nuclear facilities; (4) determining the propriety of delegating implementation authority for Federal standards for control of radionuclides as hazardous air pollutants; and (5) implementing the Indoor Radon Abatement Act (15 U.S.C. 53, Subchapter III). The recipient will also be required to review and provide comments on issues related to radiological emergency preparedness and homeland security.

2. Suggested State Regulations for the Control of Radiation (SSRCR)

The recipient of this cooperative agreement award will be expected to provide the leadership to refresh and update previously developed consensus guidance documents and SSRCR to provide States with up-to-date assistance in effective management of radiological hazards.

Updating and maintaining the SSRCR will be an integral aspect of this cooperative agreement. These regulations will be disseminated to the States for the purpose of promoting uniformity between the States. The regulations will address issues relevant to controlling radiation exposure from all sources such as low-level waste, radioactive contamination, radioactive materials, radon, and x-rays in the healing arts.

The recipient will be required to develop a process to determine the need, priority, and timing for regulation updates and development of new SSRCRs. This shall include collaboration with the Federal Agencies, in accordance with Federal statutes and regulations that are providing access to rules that are still under development to enable the recipient to initiate timely development or revisions in parallel.

3. Committee Oversight and Management

The recipient should anticipate oversight and management responsibilities for approximately 45 committees. In some instances, the recipient will be required to provide representatives to certain Federal radiation committees, such as the Federal Radiological Preparedness Coordinating Committee and its subcommittees (overseen by FEMA).

While official committee members are limited to State members, non-State and Federal representatives may be appointed as advisors to these committees and other working groups dealing with problems related to the Agency mission. These representatives will participate in the discussions leading to any recommendations developed by the committees and working groups. They will be primarily responsible for assuring that such recommendations are in accordance with Federal statutes, regulations, and policy. The representatives will also act

as investigators, collaborators, or resource personnel, as appropriate.

4. Special Projects

The recipient will implement special projects as determined by the participating State and Federal Agencies. Areas for which groups may be needed include, but are not limited to, radioactive materials and radiation exposure problems in the environment, in the healing arts, in industry, and in, or related to, consumer products. Deliverables may include studies, reports, or recommendations.

5. Annual Meeting/Training

The recipient will be required to plan, conduct, and handle all administrative functions for an annual meeting. This meeting will offer an opportunity for member States and other interested parties to convene to exchange concerns and ideas for problem solving. The recipient should consult with stakeholders to determine priority agenda items and topics of interest. General Sessions of this annual meeting should include workshops to define new problems, and discussions and lectures on mutually beneficial radiological health techniques, procedures, and systems. Identified areas of mutual concern in radiation control should be considered for assignment to a task force or committee comprised of experts. The recipient will be expected to publish the meeting proceedings on the recipient's web site for limited dissemination to member States and relevant Federal personnel.

In conjunction with the annual meeting, the recipient will be required to hold training sessions. These sessions should demonstrate mutually beneficial techniques, procedures, and systems that have been developed by the sponsoring Agencies or the recipient. The recipient may also be requested by FDA to provide instructors for Federal training courses with a radiological component held outside of the annual meeting.

6. Information Access

A Web site will be maintained by the recipient for the benefit of the States and other interested parties. The FDA Project Officer and other designated Federal personnel will be given complete and full access to all information posted on the site that is relevant to the work supported by FDA and other supporting Agencies. The information and materials posted on the site should be reviewed and updated at regular intervals. Expertise in Web site maintenance and security is required to fulfill this task.

7. Reports and Publications

Reports generated by the task forces, committees, and workshops should include recommendations for the resolution of problem areas as well as cost/benefit evaluations and should be delivered within the time frame determined at the time of assignment. These reports will be reviewed, in accordance with Federal statutes and regulations, by the recipient's governing body before final dissemination to Federal and/or State officials. Any publications supported by Federal funds must include a statement acknowledging Federal support, as well as a disclaimer that the information presented is not necessarily the view of the supporting Agencies.

The recipient will provide a periodic newsletter that will be made available to member States and relevant Federal personnel on the Web site. The newsletter should include updates on projects and programs relevant to the mission of, and supported by, the contributing Federal Agencies. The FDA Project Officer and liaisons from other Federal Agencies supporting this Agreement will be provided access to secured information on the Web site via passwords.

The recipient will also maintain a directory of personnel responsible for radiological health programs in the member States and Federal Agencies. This directory will be updated annually and published for distribution by the recipient. At least two paper copies of the directory and a non-copyright electronic version will be provided to all contributing Federal Agencies.

C. Eligibility Information

Nonprofits Other Than Institutions of Higher Education:

- Nonprofits with 501(c)(3) IRS status (other than institutions of higher education).

For-Profit Organizations:

- Small businesses; and
- For-profit organizations (other than small businesses).

Governments:

- State Governments,
- County Governments,
- Indian/Native American Tribal Governments (Federally recognized), and
- U.S. Territory or Possession.

Foreign Institutions:

- Non-domestic (non-U.S.) entities (foreign institutions) are not eligible to apply.
- Non-domestic (non-U.S.) components of U.S. organizations are not eligible to apply.

II. Award Information/Funds Available

A. Award Amount

FDA in collaboration with the NRC, the EPA, and FEMA, intends to commit $400,000 in FY 2013. Only one award will be made.

B. Length of Support

The length of support will be for up to 5 years. Funding beyond the first year will be noncompetitive and will depend on: (1) Acceptable programmatic performance during the preceding year and (2) the availability of Federal fiscal year funds.

III. Electronic Application, Registration, and Submission

Only electronic applications will be accepted. To submit an electronic application in response to this FOA, applicants should first review the full announcement located at *http://www.grants.gov/* (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) For all electronically submitted applications, the following steps are required.

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With System for Award Management at *https://www.sam.gov/portal/public/SAM*
- Step 3: Obtain Username & Password
- Step 4: Authorized Organization Representative (AOR) Authorization
- Step 5: Track AOR Status
- Step 6: Register With Electronic Research Administration (eRA) Commons

Steps 1 through 5, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp*. Step 6, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp*. After you have followed these steps, submit electronic applications to: *http://www.grants.gov/*.

Dated: January 22, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–01639 Filed 1–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012-N–0710]

Electronic Study Data Submission; Data Standard Support End Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Center for Biologics Evaluation and Research (CBER), the Center for Drug Evaluation and Research (CDER), and the Center for Devices and Radiological Health (CDRH) are announcing the end of support for the 3.1.1. version of Clinical Data Interchange Standards Consortium (CDISC) Study Data Tabulation Model (SDTM) Implementation Guide (SDTM IG 3.1.1.). SDTM IG 3.1.2, which has been available since October 2009, is the newer standard supported by FDA. Support for SDTM IG 3.1.1 will end on January 28, 2015.

FOR FURTHER INFORMATION CONTACT: Virginia Hussong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 1161, Silver Spring, MD 20993, Phone: 301–796–1016, *EDATA@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA encourages sponsors to submit standardized study data using Agency-supported data standards (see *http://www.fda.gov/ForIndustry/Data Standards/StudyDataStandards/default.htm*).[1] An Agency-supported data standard means that FDA has established processes and technology infrastructure to support the receipt, processing, review, and archiving of study data using the standard. As data standards evolve, FDA will periodically end support for old standards in favor of newer standards that are better suited to meet FDA data management and review needs. FDA maintains a catalog of the supported data standards for study data submissions at *http://www.fda.gov/downloads/ForIndustry/Data Standards/StudyDataStandards/UCM292505.xls*.

To facilitate the transition to newer standards, FDA is committed to providing a transition period of 24 months during which both older and newer standards are supported. FDA first began supporting SDTM IG 3.1.2 on October 30, 2009, over 2 years ago.

This notice establishes that CBER, CDER, and CDRH are ending support for SDTM IG 3.1.1. effective January 28, 2015. Effective immediately, submitters are strongly encouraged to use SDTM IG 3.1.2 instead. The support end date is the date past which study data using the standard may not be submitted, unless special arrangements have been made in advance with the Agency.

FDA recognizes the challenges associated with adopting a new standard, particularly because studies are often conducted and study data are standardized months to years before submission to the Agency. Submitters seeking a special arrangement to provide data using SDTM IG 3.1.1 beyond the established support end date should submit a waiver request. A waiver request process will be posted at *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/ucm249979.htm* for CDER and *http://www.fda.gov/BiologicsBloodVaccines/DevelopmentApprovalProcess/ucm209137.htm* for CBER by November 1, 2012. The waiver process will be put into place to support the transition and allow for submission of clinical data in SDTM IG 3.1.1 format data in cases where SDTM IG 3.1.2 is otherwise not feasible and/or when such submission has been determined as having no negative impact to the review process.

Dated: January 22, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–01641 Filed 1–25–13; 8:45 am]

BILLING CODE 4160–01–P

[1] Section 745A(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), added by section 1136 of the Food and Drug Administration Safety and Innovation Act (FDASIA) (Public Law 112–144), requires electronic submission of drug and biologic applications beginning no earlier than 24 months after issuance of a final guidance. The final guidance, to be issued under section 745A of the FD&C Act following public notice and opportunity for comment, will specify the format required for such electronic submissions. The action announced in this notice, although applicable to electronic submission of standardized study data, is not being taken under section 745A of the FD&C Act and is not intended to trigger the mandatory submission requirements under that section.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0082]

Guidance for Industry on Clinical Pharmacogenomics: Premarket Evaluation in Early-Phase Clinical Studies and Recommendations for Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Clinical Pharmacogenomics: Premarket Evaluation in Early-Phase Clinical Studies and Recommendations for Labeling.'' This guidance is intended to assist the pharmaceutical industry and other investigators engaged in new drug development in evaluating how variations in the human genome, specifically DNA sequence variants, could affect a drug's pharmacokinetics (PK), pharmacodynamics (PD), efficacy, or safety. The guidance provides recommendations on when and how genomic principles should be considered and applied in early-phase clinical studies to address questions arising during drug development and regulatory review.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Issam Zineh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 3178, Silver Spring, MD 20993–0002, 301–796–4756; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Clinical Pharmacogenomics: Premarket

Evaluation in Early-Phase Clinical Studies and Recommendations for Labeling.'' This guidance should help sponsors, researchers, and other interested persons engaged in new drug development in evaluating how variations in the human genome, specifically DNA sequence variants, could affect a drug's pharmacokinetics, pharmacodynamics, efficacy, or safety. The guidance provides recommendations on when and how genomic principles should be considered and applied in early-phase clinical studies to address questions arising during drug development and regulatory review. The guidance does not address trial design or statistical analysis considerations for later-phase randomized controlled clinical trials that are intended to draw definitive conclusions about treatment effects in a genomic subgroup or codevelopment of a drug and in vitro diagnostic. Rather, the considerations here are more relevant for exploratory and observational studies intended to generate genomic hypotheses that may then be tested in confirmatory trials.

Drug development is commonly described in ''phases'' (21 CFR 312.21). The first two phases provide initial information about safety and efficacy, and ideally examine a broad range of doses, so that the larger, later adequate, and well-controlled trials (phase 3) that are needed to support marketing approval can be efficiently designed. Across the drug development continuum, genomic data may be used for several purposes, including: (1) Identifying the basis for PK outliers and intersubject variability in clinical response; (2) ruling out the role of polymorphic pathways as clinically significant contributors to variable PK, PD, efficacy, or safety; (3) estimating the magnitude of potential drug-drug interactions; (4) investigating the molecular or mechanistic basis for lack of efficacy or occurrence of adverse reactions; and (5) designing clinical trials to test for greater effects in specific subgroups (i.e., use in study enrichment strategies).

On February 18, 2011 (76 FR 9583), FDA issued a draft of this guidance to solicit comments from the public. After carefully reviewing received comments and in light of increased regulatory experience and the evolution of the science, FDA has revised the guidance. In addition to making clarifying changes, FDA added content to describe when pharmacogenomics (PGx) studies are warranted, including circumstances when full sample ascertainment is expected to evaluate a specific hypothesis. In addition, a number of topics were further elaborated, including targeted sample collection, sample retention, genotyping approaches, pooled analyses, dedicated prospective PGx studies, genetic substudies, and safety PGx.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on conducting pharmacogenomic studies in early-phase clinical studies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information have been approved under OMB control numbers 0910–0014 and 0910–0572.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *http://www.regulations.gov.*

Dated: January 22, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–01638 Filed 1–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0128; Formerly Docket No. 2007D–0396]

Detecting and Evaluating Drug-Induced Liver Injury; What's Normal, What's Not, and What Should We Do About It?; Public Conference; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public conference entitled ''Detecting and Evaluating Drug-Induced Liver Injury; What's Normal, What's Not, and What Should We Do About It?'' This conference will be cosponsored with the Critical Path Institute (C-Path) and the Pharmaceutical Research and Manufacturers of America. Its purpose is to discuss, debate, and build consensus among stakeholders in the pharmaceutical industry, academia, health care providers, patient groups, and regulatory bodies on how best to detect and assess the severity, extent, and likelihood of drug causation of liver injury and dysfunction in people using drugs for any medical purpose.

DATES: The public conference will be held on March 20, 2013, from 8 a.m. to 6 p.m. and March 21, 2013, from 8 a.m. until 4 p.m.

ADDRESSES: The conference will take place at the Marriott Inn & Conference Center, University of Maryland University College, 3501 University Blvd., East Hyattsville, MD 20783.

FOR FURTHER INFORMATION CONTACT: Lana L. Pauls, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4307, Silver Spring MD 20993–0002, 301–796–0518, *lana.pauls@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In July 2009, FDA announced the availability of guidance for industry entitled ''Drug-Induced Liver Injury: Premarketing Clinical Evaluation'' (74 FR 38035; July 30, 2009). This guidance explained that drug-induced liver injury (DILI) was the most frequent cause of safety-related drug marketing withdrawals for the past 50 years and that hepatotoxicity has limited use of many drugs that have been approved and prevented the approval of others. It

discusses methods of detecting DILI by periodic tests of serum enzyme activities and bilirubin concentration, and how changes in the results of those laboratory tests over time, along with symptoms and physical findings, may be used to estimate severity of the injury. It suggests some ''stopping rules'' for interrupting drug treatment, and the need to obtain sufficient clinical information to assess causation. FDA published a draft of this guidance in 2006, and comments on the draft were taken into consideration when issuing the final guidance in July 2009 (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM174090.pdf*.). FDA is now interested in obtaining stakeholder input on the issues addressed in this guidance, including comments regarding potential revisions to the guidance.

II. The Public Conference

A. Why are we holding this conference?

The purpose of the 2013 conference is to invite participants to present their data and views, and to hold open discussion.

B. Registration, Transcripts, and Additional Information on This Conference and Its Predecessors

A registration fee ($600 for industry registrants and $300 for Federal Government and academic registrants) will be charged to help defray the costs of renting meeting spaces and the meals and snacks provided. The fee will also be used to cover travel costs incurred by invited academic (but not Government or Industry) speakers and other expenses. The registration process will be handled by C-Path, an independent, nonprofit organization established in 2005 with public and private philanthropic support from the southern Arizona community, Science Foundation Arizona, and FDA.

The presentations and discussions will be transcribed and published on the Internet for public availability after minor editing by the organizers of the meeting.

Additional information on the conference, program, and registration procedures may be obtained on the Internet at *http://www.c-path.org*, and also at *http://www.fda.gov* by typing into the search box ''liver toxicity''. (FDA has verified the C-Path Web site address, but is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) Material presented at past programs (from 1999 to 2012) may be accessed at *www.aasld.org*. Click on Education/Training and then scroll down to ''Drug Induced Liver Injury 2012 Program.''

Dated: January 22, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–01640 Filed 1–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

SIRT2 Inhibitors as Novel Therapeutics for Myocardial Infarction and Ischemic Stroke and to Prevent Necrosis

Description of Technology: Sirtuin 2 (SIRT2) inhibitors to reduce necrosis and, thereby, as novel therapeutics to treat ischemic stroke and myocardial infarction. Accumulating evidence indicates that programmed necrosis plays a critical role in cell death during ischemia-reperfusion. NIH investigators have shown that the NAD-dependent deacetylase SIRT2 binds constitutively to receptor-interacting protein 3 (RIP3) and that deletion or knockdown of SIRT2 prevents formation of the RIP1–RIP3 complex in mice. These investigators also found that genetic or pharmacological inhibition of SIRT2 blocks cellular necrosis induced by TNF-alpha and RIP1 is a critical target of SIRT2-dependent deacetylation. Further studies also showed that the hearts of *Sirt2*$^{-/-}$ mice, or wild-type mice treated with a specific pharmacological inhibitor of SIRT2, show marked protection from ischemic injury. These results implicate SIRT2 as an important regulator of programmed necrosis and indicate that SIRT2 inhibitors may constitute a novel approach to protect against necrotic injuries, including ischemic stroke and myocardial infarction.

Potential Commercial Applications:

- Novel therapeutics to protect against necrotic injuries.
- Novel therapeutics to treat ischemic stroke and myocardial infarction.
- Novel therapeutics to treat diseases in which necrosis is involved.

Competitive Advantages:

- None of the currently available drugs address the necrotic damage caused due to ischemia and reperfusion.
- Using a SIRT2 inhibitor could limit the damage caused by necrosis and contribute to accelerated recovery in patients suffering from these conditions.

Development Stage:

- Early-stage
- Pre-clinical
- In vitro data available
- In vivo data available (animal)

Inventors: Drs. Nisha Narayan and Toren Finkel (NHLBI)

Publication: Narayan N, et al. The NAD-dependent deacetylase SIRT2 is required for programmed necrosis. Nature. 2012 Dec 13;492(7428):199–204. [PMID 23201684]

Intellectual Property: HHS Reference No. E–003–2013/0—U.S. Application No. 61/723,496 filed 17 Nov 2012

Licensing Contact: Suryanarayana (Sury) Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov*

Collaborative Research Opportunity: The NHLBI is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize retinoid-related orphan receptors (RORs) function in chronic diseases. For collaboration opportunities, please contact Ms. Peg Koelble at *koelblep@mail.nih.gov* or 301–594–4095.

Multivalent Meningiococcal Conjugates and Methods for Preparing Conjugates

Description of Technology: Among 13 isolated meningococcal serogroups, A, B, C, W–135 and Y are the most prevalent. There are three FDA-approved capsular polysaccharide (PS)-based vaccines, one tetravalent PS vaccine, and two tetravalent conjugate vaccines for protection against

meningococcal disease caused by groups A, C, W–135 and Y Neisseria meningitidis. Group B capsular PS is similar to the PS structure expressed in certain human tissues, thus making it a poor immunogen. Furthermore, if used as a vaccine, the possibility exists of it inducing an autoimmune response. Thus, a need remains to develop additional meningococcal vaccines, particularly for group B and group X meningococcal serogroups.

This application claims immunogenic conjugates including at least one polysaccharide conjugated to a group B factor H binding protein (fHbp). Also claimed are immunogenic conjugates including at least one polysaccharide conjugated to a Neisserial surface protein A (NspA). Additionally, improved methods for preparing conjugates are claimed.

Potential Commercial Applications:
- Multivalent meningitis vaccine
- Research tool

Competitive Advantages:
- Higher vaccine yield
- More efficient conjugation method
- Lower cost vaccines

Development Stage:
- Pre-clinical
- In vitro data available
- In vivo data available (animal)

Inventors: Che-Hung Robert Lee (FDA/CBER), Vavlerian Pinto (EM), Elizabeth Moran (EM), Robert Burden (EM)

Intellectual Property: HHS Reference No. E–082–2012/0—U.S. Application No. 61/651,382 filed 24 May 2012.

Related Technologies:
- HHS Reference No. E–301–2003/0—U.S. Application No. 13/243,480 filed 06 Aug 2004, claiming priority to 06 Aug 2003
- HHS Reference No. E–085–2005/0—U.S. Patent 8,173,135 issued 08 May 2012; U.S. Application No. 13/440,856 filed 05 Apr 2012, claiming priority to 17 Mar 2006

Licensing Contact: Peter A. Soukas; 301–435–4646; ps193c@nih.gov

Collaborative Research Opportunity: The FDA/CBER is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Multivalent Meningiococcal Conjugates and Methods for Preparing Conjugates. For collaboration opportunities, please contact Che-Hung Robert Lee at *robert.lee@fda.hhs.gov* or 301–451–5934.

Enhanced Cancer Therapy Using Photoimmunotherapy (PIT) in Combination With Anti-Cancer Agents

Description of Technology: The invention is in the field of Photoimmunotherapy (PIT). More specifically, the invention relates to antibody-fluorophore conjugates where the antibody is specific for cancer cells and the fluorophore is IR700 dye. Binding of such conjugates to targeted cancer cells followed by irradiation with near infrared light (NIR) was shown to kill cancer cells in a highly specific manner. Furthermore, the invention discloses that the therapeutic effect of the PIT conjugate is significantly enhanced by the administration of one or more anti-cancer agents following the irradiation step. This is achieved by the markedly rapid accumulation of the therapeutic agent in the PIT-treated tissue. Also provided in the invention are wearable devices that incorporate NIR light emitting diodes (LEDs) and can be used to activate the PIT conjugates.

Potential Commercial Applications: Anti-cancer therapy.

Competitive Advantages:
- Highly specific to cancer cells
- Do not affect surrounding normal cells
- Negligible toxicity
- Enhancement of therapeutic effects when administered in combination with one or more other therapeutic agents
- Possible to follow the cell killing process in real time, using fluorescence lifetime imaging

Development Stage: In vivo data available (animal).

Inventors: Hisataka Kobayashi and Peter L. Choyke (NCI).

Publications:

1. Mitsunaga M, et al. Immediate in vivo target-specific cancer cell death after near infrared photoimmunotherapy. BMC Cancer 2012 Aug 8;12: 345. [PMID 22873679]
2. Mitsunaga M, et al. Near-infrared theranostic photoimmunotherapy (PIT): Repeated exposure of light enhances the effect of immunoconjugate. Bioconjug Chem. 2012 Mar 21;23(3):604–9. [PMID 22369484]
3. Mitsunaga M, et al. Cancer cell-selective in vivo near infrared photoimmunotherapy targeting specific membrane molecules. Nat Med. 2011 Nov6;17(12):1685–91. [PMID 22057348]

Intellectual Property:
- HHS Reference No. E–205–2010/2—PCT Application No. PCT/US2012/044421 filed 27 Jun 2012
- HHS Reference No. E–250–2010/1—U.S. Application No. 13/180,111 filed 11 Jul 2011
- HHS Reference No. E–205–2010/0—U.S. Provisional Application No. 61/636,079 filed 09 Jul 2010

Licensing Contact: Uri Reichman, Ph.D., MBA; 301–435–4616; *reichmau@mail.nih.gov.*

Dated: January 18, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–01620 Filed 1–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity Applications.

Date: February 15, 2013.

Time: 10:00 p.m. to 11:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 18, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–01621 Filed 1–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of April 16, 2013 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Adminstrator for Mitigation has resolved any appeals resulting from this notification.

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

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

Community	Community map repository address
Suwannee County, Florida, and Incorporated Areas Docket No.: FEMA–B–1239	
City of Live Oak	City Hall, 101 White Oak Avenue Southeast, Live Oak, FL 32064.
Unincorporated Areas of Suwannee County	Suwannee County Courthouse, County Coordinator's Office, 200 Ohio Avenue South, Live Oak, FL 32064.
Pottawattamie County, Iowa, and Incorporated Areas Docket No.: FEMA–B–1242	
City of Avoca	City Hall, 201 North Elm Street, Avoca, IA 51521.
City of Carson	City Hall, 316 South Commercial Street, Carson, IA 51525.
City of Council Bluffs	City Hall, 209 Pearl Street, Room 207, Council Bluffs, IA 51503.
City of Hancock	City Hall, 202 North Main Street, Hancock, IA 51536.
City of Macedonia	City Hall, 322 Main Street, Macedonia, IA 51549.
City of Minden	City Hall, 207 Main Street, Minden, IA 51553.
City of Neola	City Hall, 105 3rd Street, Neola, IA 51559.
City of Oakland	City Hall, 101 North Main Street, Oakland, IA 51560.
City of Treynor	City Hall, 7 South Eyeberg Avenue, Treynor, IA 51575.
City of Underwood	City Hall, 218 2nd Street, Underwood, IA 51576.
City of Walnut	City Hall, 229 Antique City Drive, Walnut, IA 51557.
Unincorporated Areas of Pottawattamie County	Pottawattamie County Courthouse, 227 South 6th Street, Council Bluffs, IA 51501.
Lewis County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1238	
City of Concord	City Hall, 12913 West KY–8, Vanceburg, KY 41179.
City of Vanceburg	Visitors Center, 151 3rd Street, Vanceburg, KY 41179.
Unincorporated Areas of Lewis County	Lewis County Emergency Management Annex, 36 Court Street, Vanceburg, KY 41179.
Mason County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1239	
City of Dover	City Hall, 2060 Lucretia Street, Dover, KY 41034.
City of Maysville	City Hall, 216 Bridge Street, Maysville, KY 41056.

Community	Community map repository address
Unincorporated Areas of Mason County	Maysville City Hall, 216 Bridge Street, Maysville, KY 41056.
Pike County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1246	
City of Coal Run Village	Coal Run Village City Hall, 81 Church Street, Pikeville, KY 41501.
City of Pikeville	City Hall, 118 College Street, Pikeville, KY 41501.
Unincorporated Areas of Pike County	Pike County Courthouse, 146 Main Street, Pikeville, KY 41501.

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

James A. Walke,

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

[FR Doc. 2013–01629 Filed 1–25–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of May 16, 2013 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Adminstrator for Mitigation has resolved any appeals resulting from this notification.

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

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

I. Non-watershed-based studies:

Community	Community map repository address
Greene County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1243	
City of Paragould	City Hall, 301 West Court Street, Paragould, AR 72450.
Unincorporated Areas of Greene County	Greene County Courthouse, 306 West Court Street, Paragould, AR 72450.
Curry County, New Mexico, and Incorporated Areas Docket No.: FEMA–B–1242	
City of Clovis	Administrative Office, 321 North Connelly Street, Clovis, NM 88101.
Unincorporated Areas of Curry County	Curry County Administrative Office, 700 North Main Street, Clovis, NM 88101.

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

James A. Walke,

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

[FR Doc. 2013–01631 Filed 1–25–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1292]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before April 29, 2013.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1292, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
LaSalle County, Illinois, and Incorporated Areas	
Maps Available for Inspection Online at: *www.starr-team.com/starr/RegionalWorkspaces/RegionV/LaSalleILPMR*	
City of Mendota	City Hall, 800 Washington Street, Mendota, IL 61342.
Unincorporated Areas of LaSalle County	LaSalle County Courthouse, Environmental Services and Land Use Department, 119 West Madison Street, Ottawa, IL 61350.
Orange County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/7498.htm*	
Town of French Lick	Town Hall, 8587 West Main Street, French Lick, IN 47432.

Community	Community map repository address
Town of Paoli	Town Hall, 110 North Gospel Street, Paoli, IN 47454.
Town of West Baden Springs	Town Hall, 8361 West State Road 56, West Baden Springs, IN 47469.
Unincorporated Areas of Orange County	Orange County Emergency Management, Orange County Courthouse, 205 East Main Street, Paoli, IN 47454.
Perry County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/7497.htm*	
City of Cannelton	City Hall, 210 South 8th Street, Cannelton, IN 47520.
City of Tell City	Planning and Zoning, City Hall, 700 Main Street, Tell City, IN 47586.
Town of Troy	Town Hall, 330 Harrison Street, Troy, IN 47588.
Unincorporated Areas of Perry County	Perry County Courthouse, 2219 Payne Street, Tell City, IN 47586.
Scott County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/7480.htm*	
City of Austin	City Hall, 80 West Main Street, Austin, IN 47102.
City of Scottsburg	Scott County Area Plan Commission, 1 East McClain Avenue, Suite G40, Scottsburg, IN 47170.
Unincorporated Areas of Scott County	Scott County Area Plan Commission, 1 East McClain Avenue, Suite G40, Scottsburg, IN 47170.
Pike County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/7496.htm*	
City of Petersburg	City Hall, 704 East Main Street, Petersburg, IN 47567.
Town of Winslow	Town Hall, 301 North Main Street, Winslow, IN 47598.
Unincorporated Areas of Pike County	Pike County Courthouse, 801 Main Street, Petersburg, IN 47567.
Spencer County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/7495.htm*	
City of Rockport	City Hall, 426 Main Street, Rockport, IN 47635.
Town of Grandview	Town Hall, 316 Main Street, Grandview, IN 47615.
Town of Richland	Town of Richland, 4259 North State Road 161, Richland, IN 47634.
Town of Santa Claus	Town Hall, 90 North Holiday Boulevard, Santa Claus, IN 47579.
Unincorporated Areas of Spencer County	Spencer County Plan Commission, Spencer County Courthouse, Room 12, 200 Main Street, Rockport, IN 47635.
Starke County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/7356.htm*	
City of Knox	101 West Washington Street, Knox, IN 46534.
Town of North Judson	204 Keller Avenue, North Judson, IN 46366.
Unincorporated Areas of Starke County	53 East Mound Street, Knox, IN 46534.
Switzerland County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/7342.htm*	
Town of Patriot	Switzerland County Courthouse, 212 West Main Street, Vevay, IN 47043.
Town of Vevay	Switzerland County Courthouse, 212 West Main Street, Vevay, IN 47043.
Unincorporated Areas of Switzerland County	Switzerland County Courthouse, 212 West Main Street, Vevay, IN 47043.
Wells County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/7358.htm*	
City of Bluffton	Wells County Area Plan Commission, 223 West Washington Street, Room 211, Bluffton, IN 46714.
Town of Markle	Huntington Department of Community Development, Huntington County Courthouse, Room 210, 201 North Jefferson Street, Huntington, IN 46750.
Town of Ossian	Wells County Area Plan Commission, 223 West Washington Street, Room 211, Bluffton, IN 46714.
Town of Vera Cruz	Wells County Area Plan Commission, 223 West Washington Street, Room 211, Bluffton, IN 46714.
Town of Zanesville	Wells County Area Plan Commission, 223 West Washington Street, Room 211, Bluffton, IN 46714.

Community	Community map repository address
Unincorporated Areas of Wells County	Wells County Area Plan Commission, 223 West Washington Street, Room 211, Bluffton, IN 46714.
Marquette County, Michigan (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionV/MarquetteCoMI/SitePages/Home.aspx*	
Charter Township of Chocolay	Chocolay Township Office, 5010 U.S. Highway 41 South, Marquette, MI 49855.
Charter Township of Marquette	Township Hall, 161 County Road 492, Marquette, MI 49855.
City of Marquette	City Hall, 300 West Baraga Avenue, Marquette, MI 49855.
Township of Ely	Ely Township Hall, 1555 County Road 496, Ishpeming, MI 49849.
Township of Powell	Powell Township Hall, 101 Bensinger Street, Big Bay, MI 49808.
Township of Sands	Sands Township Hall, 987 South Michigan Route 553, Gwinn, MI 49841.
Township of Skandia	Township Hall, 224 Kreiger Drive, Skandia, MI 49885.
Township of West Branch	West Branch Township Hall, 1016 County Road 545 North, Skandia, MI 49885.
Washington County, Ohio, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionV/WashingtonOH-PMR/Preliminary%20Maps/Forms/AllItems.aspx*	
City of Marietta	Engineering Department, 304 Putnam Street, Marietta, OH 45750.
Unincorporated Areas of Washington County	Washington County Building Department, 217 Putnam Street, Marietta, OH 45750.
Dodge County, Wisconsin, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionV/FoxLakeDodgeCoWIPMR/Lists/Prelim_Maps/AllItems.aspx*	
City of Fox Lake	City Hall, 248 East State Street, Fox Lake, WI 53933.
Unincorporated Areas of Dodge County	Administration Building, 127 East Oak Street, Juneau, WI 53039.
Waukesha County, Wisconsin, and Incorporated Areas	
Maps Available for Inspection Online at: *www.starr-team.com/starr/RegionalWorkspaces/RegionV/BarkRiverWaukeshaWIPMR*	
City of Delafield	City Hall, 500 Genesee Street, Delafield, WI 53018.
Unincorporated Areas of Waukesha County	Waukesha County Administration Center, 515 West Moreland Boulevard, Waukesha, WI 53188.
Village of Dousman	Village Hall, 118 South Main Street, Dousman, WI 53118.
Village of Hartland	Village Hall, 210 Cottonwood Avenue, Hartland, WI 53029.
Village of Merton	Village Hall, N67W28343 Sussex Road, Merton, WI 53056.
Village of Nashotah	Village Hall, N44W32950 Watertown Plank Road, Nashotah, WI 53058.
Village of Summit	Village Hall, 2911 North Dousman Road, Oconomowoc, WI 53066.

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

James A. Walke,

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

[FR Doc. 2013–01628 Filed 1–25–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1283]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new

buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before April 29, 2013.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1283, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Madison County, Alabama, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.adeca.alabama.gov/Divisions/owr/floodplain/Pages/County-Status.aspx*	
City of Huntsville	308 Fountain Circle, Huntsville, AL 35801.
City of Madison	100 Hughes Road, Madison, AL 35758.
Town of Gurley	235 Walker Street, Gurley, AL 35748.
Town of New Hope	5496 Main Drive, New Hope, AL 35760.
Town of Owens Cross Roads	2965 Old Highway 431, Owens Cross Roads, AL 35763.
Town of Triana	Triana Town Hall, 640 Sixth Street, Madison, AL 35756.
Unincorporated Areas of Madison County	Madison County Engineering Building, 814 Cook Avenue, Huntsville, AL 35801.
Montgomery County, Alabama, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.adeca.alabama.gov/Divisions/owr/floodplain/Pages/County-Status.aspx*	
City of Montgomery	103 North Perry Street, Montgomery, AL 36104.
Town of Pike Road	915 Meriweather Road, Pike Road, AL 36064.
Unincorporated Areas of Montgomery County	Montgomery County Engineering Dept, 3152 Rolling Circle Road, Montgomery, AL 36111.
Newton County, Georgia, and Incorporated Areas	
Maps Available for Inspection Online at: *www.georgiadfirm.com/status/mapmodStatus.html*	
City of Covington	City Hall, 2194 Emory Street, Covington, GA 30015.
City of Oxford	City Hall, 110 West Clark Street, Oxford, GA 30054.
City of Porterdale	City Hall, 2400 Main Street, Porterdale, GA 30070.
Unincorporated Areas of Newton County	Newton County GIS Department, 1113 Usher Street, Suite 302, Covington, GA 30014.

Community	Community map repository address
Floyd County, Indiana and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionV/FloydCoIN/SitePages/Home.aspx*	
City of New Albany	City Plan Commission, City-County Building, 311 Hauss Square, Room 329, New Albany, IN 47150.
Unincorporated Areas of Floyd County	Pine View Government Center, 2524 Corydon Pike, Suite 203, New Albany, IN 47150.
Newton County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/6396.htm*	
Town of Brook	Town Hall, 112 West Main Street, Brook, IN 47922.
Town of Kentland	Town Hall, 300 North Third Street, Kentland, IN 47951.
Unincorporated Areas of Newton County	Newton County Government Center, Building Department, 4117 South 240 West, Suite 700, Morocco, IN 47963.
Bristol County, Massachusetts (All Jurisdictions)	
Maps Available for Inspection Online at: *www.starr-team.com/starr/RegionalWorkspaces/RegionI/NewBedford-FairhavenMAlevee/Preliminary%20Maps/Forms/AllItems.aspx*	
City of New Bedford	City Hall, 133 William Street, New Bedford, MA 02740.
Town of Fairhaven	Town Hall, 40 Center Street, Fairhaven, MA 02719.
Norfolk County, Massachusetts (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionI/NorfolkCountyMAcoastal/Preliminary%20Maps/Forms/AllItems.aspx*	
City of Quincy	City Hall, 1305 Hancock Street, Quincy, MA 02169.
Town of Milton	Town Office Building, 525 Canton Avenue, Milton, MA 02186.
Burleigh County, North Dakota, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/north-dakota/burleigh/*	
City of Bismarck	221 North Fifth Street, Bismarck, ND 58501.
City of Lincoln	74 Santee Road, Lincoln, ND 58504.
Unincorporated Areas of Burleigh County	Burleigh County Commission, 221 North Fifth Street, Bismarck, ND 58501.

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

James A. Walke,

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

[FR Doc. 2013–01630 Filed 1–25–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1287]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before April 29, 2013.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1287, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *www.fema.gov/pdf/media/factsheets/2010/srp_fs.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Lexington-Fayette Urban County Government, Kentucky	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/kentucky/fayette/*	
Lexington-Fayette Urban County Government	Government Center, 200 East Main Street, 12th floor, Lexington, KY 40507.
Hoke County, North Carolina, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.ncfloodmaps.com/*	
Unincorporated Areas of Hoke County	Hoke County Planning Office, 423 East Central Avenue, Raeford, NC 28376.
Robeson County, North Carolina, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.ncfloodmaps.com/*	
Unincorporated Areas of Robeson County	Robeson County Building Safety and Code Enforcement Office, 435 Country Club Drive, Lumberton, NC 28360.
Marin County, California, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=21&choProj=230*	
City of Larkspur	Planning Department, 400 Magnolia Avenue, Larkspur, CA 94939.
City of Mill Valley	Public Works Department, 26 Corte Madera Avenue, Mill Valley, CA 94941.
City of San Rafael	Public Works Department, 111 Morphew Street, San Rafael, CA 94901.
Town of Tiburon	Planning Department, 1505 Tiburon Boulevard, Tiburon, CA 94920.
Town of Corte Madera	Engineering Department, 233 Tamalpais Drive, Corte Madera, CA 94976.
Town of Fairfax	Department of Planning and Building Services, 142 Bolinas Road, Fairfax, CA 94930.
Town of Ross	Public Works Department, 31 Sir Frances Drake Boulevard, Ross, CA 94957.
Town of San Anselmo	Public Works Department, 525 San Anselmo Avenue, San Anselmo, CA 94960.
Unincorporated Areas of Marin County	Department of Public Works, 3501 Civic Center Drive, Room 304, San Rafael, CA 94913.

Community	Community map repository address
Campbell County, Kentucky, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/kentucky/campbell/*	
City of Alexandria	City Building, 8236 West Main Street, Alexandria, KY 41001.
City of Bellevue	City Building, 616 Poplar Street, Bellevue, KY 41073.
City of California	Northern Kentucky Area Planning Commission, 2332 Royal Drive, Fort Mitchell, KY 41017.
City of Cold Spring	City Building, 638 Madison Avenue, Covington, KY 41076.
City of Crestview	City Building, 9 Dorothy Drive, Crestview, KY 41071.
City of Dayton	City Building, 514 Sixth Avenue, Dayton, KY 41074.
City of Fort Thomas	Government Building/Mayor's Office, 130 North Fort Thomas Avenue, Fort Thomas, KY 41075.
City of Highland Heights	City Building, 175 Johns Hill Road, Highland Heights, KY 41076.
City of Melbourne	Campbell County Fiscal Court Building, 1010 Monmouth Street, Newport, KY 41071.
City of Mentor	Campbell County Government Building, 24 West Fourth Street, Newport, KY 41071.
City of Newport	Government Building, 998 Monmouth Street, Newport, KY 41071.
City of Silver Grove	City Building, 308 Oak Street, Silver Grove, KY 41085.
City of Southgate	City Building, 122 Electric Avenue, Southgate, KY 41071.
City of Wilder	City Building, 520 Licking Pike, Wilder, KY 41071.
City of Woodlawn	Campbell County Government Building, 24 West Fourth Street, Newport, KY 41071.
Unincorporated Areas of Campbell County	Campbell County Government Building, 24 West Fourth Street, Newport, KY 41071.
Scotland County, North Carolina, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.ncfloodmaps.com/*	
City of Laurinburg	City Hall, 305 West Church Street, Laurinburg, NC 28353.
Town of East Laurinburg	East Laurinburg Town Municipal Building, 12 3rd Street, Laurinburg, NC 28353.
Town of Wagram	Town Office, 24421 Marlboro Street, Wagram, NC 28396.
Unincorporated Areas of Scotland County	Scotland County Government Administration Building, 507 West Covington Street, Laurinburg, NC 28352.

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

James A. Walke,

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

[FR Doc. 2013–01627 Filed 1–25–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0028]

Agency Information Collection Activities: Petition To Classify Orphan as an Immediate Relative, Form I–600; Application for Advance Processing of Orphan Petition, Form I–600A; Listing of Adult Member of the Household, Supplement 1; Revision of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 30, 2012, at 77 FR 65709, allowing for a 60-day public comment period. USCIS did receive two comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 27, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0020 or via email at *uscisfrcomment@uscis.dhs.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0028.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/*

Dashboard.do, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative; Application for Advance Processing of Orphan Petition; Listing of Adult Member of the Household.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form I–600, Form I–600A and Supplement 1;* USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses Form I–600 to determine whether a child alien is an eligible orphan. Form I–600A is used to streamline the procedure for advance processing of orphan petitions. Supplement 1 is to be completed by every adult member (age 18 and older), who lives in the home of the prospective adoptive parent(s), except for the spouse of the applicant/petitioner.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

—Form I–600 respondents estimated at 3,277. The estimated average burden per response is .50 hours (30 minutes).

—Form I–600A respondents estimated at (4,699). The estimated average burden per response is .50 hours (30 minutes).

—Supplement 1 respondents estimated at (2,500). The estimated average burden per response is .25 hours (15 minutes).

—Biometrics Respondents estimated at (20,000). The estimated average burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 28,013.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529; Telephone 202–272–8377.

Dated: January 23, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–01727 Filed 1–25–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Secretarial Commission on Indian Trust Administration and Reform

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretarial Commission on Indian Trust Administration and Reform will hold a public meeting on February 12 and 13, 2013. During the public meeting, the Commission will hear from invited speakers and the public about management of probate and real estate services, management of natural resources held in trust, and trust reform. The Commission will also host a youth outreach session on February 11, 2013, at the University of Washington.

DATES: The Commission's public meeting will begin at 8 a.m. and end at 2:30 p.m. on February 12, and begin at 8 a.m. and end at 4:30 p.m. on February 13, 2013. Members of the public who wish to attend in person should RSVP by February 8, 2013, to: *trustcommission@ios.doi.gov* to ensure adequate meeting packets will be available. Members of the public who wish to participate via teleconference or webinar should respond by February 8, 2013, to: *trustcommission@ios.doi.gov.* Virtual participation is limited to 100 participants. The Commission's public youth outreach session will be held from 7 p.m. to 9 p.m. on February 11, 2013; additional information will be available at: *http://www.doi.gov/cobell/commission/index.cfm.*

ADDRESSES: The public meeting and public youth outreach session will both be held on the University of Washington campus, in Seattle, Washington; further information on the locations will be available at *http://www.doi.gov/cobell/commission/index.cfm.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Lizzie Marsters, Chief of Staff to the Deputy Secretary, Department of the Interior, 1849 C Street NW., Room 6118, Washington, DC 20240; or email to *Lizzie_Marsters@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Secretarial Commission on Indian Trust Administration and Reform was established under Secretarial Order No. 3292, dated December 8, 2009. The Commission plays a key role in the Department's ongoing efforts to empower Indian nations and strengthen nation-to-nation relationships.

The Commission will complete a comprehensive evaluation of the Department's management and administration of the trust assets within a two-year period and offer recommendations to the Secretary of the Interior on how to improve in the future. The Commission will:

(1) Conduct a comprehensive evaluation of the Department's management and administration of the trust administration;

(2) Review the Department's provision of services to trust beneficiaries;

(3) Review input from the public, interested parties, and trust beneficiaries, which should involve conducting a number of regional listening sessions;

(4) Consider the nature and scope of necessary audits of the Department's trust administration system;

(5) Recommend options to the Secretary to improve the Department's management and administration of the trust administration system based on information obtained from the Commission's activities, including whether any legislative or regulatory changes are necessary to permanently implement the improvements; and

(6) Consider the provisions of the American Indian Trust Fund Management Reform Act of 1994 providing for termination of the Office of the Special Trustee for American

Indians, and make recommendations to the Secretary regarding termination.

Meeting Details

On the evening of Monday, February 11, 2013, the Commission will host a youth outreach session from 7 p.m. to 9 p.m. on the University of Washington campus to meet with young adults and college students on their ideas and recommendations to improve performance and services to trust beneficiaries. For additional information please refer to *http://www.doi.gov/cobell/commission/index.cfm.*

On Tuesday, February 12, 2013, and Wednesday, February 13, 2013, the Commission will hold a meeting open to the public. The following items will be on the agenda.

Tuesday, February 12, 2013

- Invocation.
- Welcome, introductions, agenda review.
- Commission operations reports and decision-making.
- Commission review and discussion of preliminary recommendations.
- Initial observations and comments from public regarding Commission recommendations.
- Panel session regarding natural resource assets.
- Panel session regarding real estate.

Wednesday, February 13, 2013

- Invocation.
- Welcome, introductions, agenda review.
- Commissioner reflections and insights from day 1 and site visit.
- Presentation and discussion from Acting Deputy Assistant Secretary for Management.
- Panel session regarding trust reform and administration.
- Remarks from the Assistant Secretary for Indian Affairs.
- Presentation and discussion regarding international trust models.
- Public comment regarding Commission discussion thus far.
- Commission discussion of insights and conclusions from panel speakers and preliminary discussion of how to integrate ideas into draft recommendations.
- Topics for next Commission public webinar and in-person meetings.
- Review action items, meeting accomplishments.
- Closing blessing, adjourn.

Written comments may be sent to the Designated Federal Official listed in the **FOR FURTHER INFORMATION CONTACT** section above. To review all related material on the Commission's work, please refer to *http://www.doi.gov/cobell/commission/index.cfm.* All meetings are open to the public.

Dated: January 22, 2013.

David J. Hayes,

Deputy Secretary.

[FR Doc. 2013–01650 Filed 1–25–13; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Renewal of the Trinity River Adaptive Management Working Group

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior (Secretary), after consultation with the General Services Administration, has renewed the Trinity River Adaptive Management Working Group (Working Group) for 2 years. The Working Group provides recommendations on all aspects of the implementation of the Trinity River Restoration Program and affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts.

FOR FURTHER INFORMATION CONTACT: Nancy Finley, Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; 707–822–7201.

SUPPLEMENTARY INFORMATION: The Working Group conducts its operations in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix). It reports to the Trinity River Management Council (TMC) and functions solely as an advisory body. The TMC reports to the Secretary through the Mid-Pacific Regional Director of the Bureau of Reclamation and the Pacific Southwest Regional Director for the Fish and Wildlife Service. The Working Group provides recommendations and advice to the TMC on: (1) The effectiveness of management actions in achieving restoration goals and alternative hypotheses (methods and strategies) for study, (2) the priority for restoration projects, (3) funding priorities, and (4) other components of the Trinity River Restoration Program.

Working Group members represent the varied interests associated with the Trinity River Restoration Program. Members are selected from, but not limited to, Trinity County residents; recreational and commercial fishermen; commercial and recreational boaters; power/utility companies; agricultural water users; private and commercial timber producers; ranchers and people with grazing rights/permits; tribes; environmental organizations; and Federal, State, and local agencies with responsibilities in the Trinity River Basin. Members must be senior representatives of their respective constituent groups with knowledge of the Trinity River Restoration Program, including the Adaptive Environmental Assessment and Management Program.

We have filed a copy of the Working Group's charter with the Committee Management Secretariat, General Services Administration; the Committee on Environment and Public Works, United States Senate; the Committee on Natural Resources, United States House of Representatives; and the Library of Congress.

Certification

I hereby certify that the Trinity River Adaptive Management Working Group is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior by Public Laws 84–386 and 96–335 (Trinity River Stream Rectification Act), 98–541 and 104–143 (Trinity River Basin Fish and Wildlife Management Act of 1984), and 102–575 (Central Valley Project Improvement Act). The Working Group will assist the Department of the Interior by providing advice and recommendations on all aspects of implementation of the Trinity River Restoration Program.

Dated: January 8, 2013.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2013–01645 Filed 1–25–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2012–N185; FF08E00000–FXES11120800000F2–123–F2]

Draft Environmental Assessment and Proposed Habitat Conservation Plan for the Interim Operations of PacifiCorp's Klamath Hydroelectric Project on the Klamath River, Klamath County, OR, and Siskiyou County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; draft environmental assessment and proposed habitat conservation plan; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, have prepared a draft environmental assessment (EA) under the National Environmental Policy Act (NEPA) for the interim operations of the Klamath Hydroelectric Project in

response to an application from PacifiCorp (applicant) for a 10-year incidental take permit for two species under the Endangered Species Act of 1973, as amended (16 UDC 1531, et seq; Act). We request data, comments, new information or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on the applicant's permit application and associated habitat conservation plan (plan), and also on the associated draft EA.

DATES: To ensure consideration, please send your written comments by March 29, 2013.

ADDRESSES: Please address written comments to Laurie R. Sada, Field Supervisor, U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office, 1936 California Avenue, Klamath Falls, OR 97601. Alternatively, you may send comments by facsimile to 541–885–7837.

FOR FURTHER INFORMATION CONTACT: Ron Larson, Biologist, or Trisha Roninger, Assistant Field Supervisor, at the address shown above or at 541–885–8481 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The application for an incidental take permit (ITP) addresses the potential for ''take'' of the Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostris*), two fishes federally listed as endangered. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the applicant's plan.

The applicant has developed a plan as part of their application for an ITP under section 10(a)(1)(B) of the Act. The proposed plan includes measures necessary to minimize and mitigate the impacts, to the maximum extent practicable, of potential proposed taking of two federally listed species to be covered by the plan, and the habitats upon which they depend, resulting from the interim operations of the Klamath Hydroelectric Project (Project), in Klamath County, Oregon, and Siskiyou County, California. This ITP would be in effect for a prospective 10-year interim period that the Project would be operating on an annual license from the Federal Energy Regulatory Commission.

We have prepared an EA to evaluate the impacts of several alternatives related to the potential issuance of an incidental take permit (ITP) to the applicant, as well as impacts of the implementation of the supporting proposed plan.

Background Information

Section 9 of the Act and its regulations prohibit taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term ''harm'' is defined in the regulations as significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicants will develop a proposed plan and ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan.

The applicant seeks incidental take authorization for the following federally listed endangered fish species—Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostris*)—which we will refer to as the ''covered species'' in this notice.

The activities proposed to be covered under this plan include activities that are otherwise necessary to operate and maintain project facilities during the permit term. In general, the covered activities include the following: (1) Operate and maintain the spill gates at Link River dam for regulation and releases of flows from Link River dam to maintain water in the East Side and West Side water conveyance features, and operate and maintain the East Side and West Side canals and flowlines following shutdown of the East Side and West Side powerhouse facilities; (2) operate and maintain Keno Dam, spill gates, and fish ladder, and regulate the water level upstream of Keno Dam in accordance with the existing agreements and licenses; (3) operate and maintain J.C. Boyle Dam, fish bypass system, water conveyance system, turbines, and powerhouse facilities, and regulate water levels and flows necessary to maintain minimum reservoir elevations, river flows and ramping rates; (4) operate and maintain Copco No. 1 and Copco No. 2 Dams, water conveyance systems, turbines, and powerhouse facilities, and regulate water levels and flows necessary to maintain minimum reservoir elevations, river flows and ramping rates; and (5) operate and maintain Iron Gate Dam (and associated appurtenances), penstocks, turbines, and powerhouse facilities, and regulate releases from Iron Gate Dam in accordance with instream flow and ramping rate requirements.

Alternatives in the Draft Environmental Assessment

The proposed action presented in the draft EA will be compared to the no-action alternative. The no-action alternative represents estimated future conditions to which the proposed action's estimated future conditions can be compared. Other alternatives considered, including their potential impacts, are also addressed in the draft EA.

No-Action Alternative

Under the no-action alternative, we would not issue a permit. The no-action alternative would not achieve the applicant's objectives and would not allow for reduced incidental take of federally-listed species or mitigation of impacts to listed species.

Proposed Alternative

Under the proposed alternative, the applicant would continue to operate the Klamath Hydroelectric Project. The project consists of eight developments. The seven developments covered by the ITP are located on the Klamath River between river mile (RM) 190.1 and 254.3, including (in order moving upstream): Iron Gate Dam and Reservoir (RM 190.1 to 196.9), Copco No. 2 Dam and Reservoir (RM 198.3 to 198.6),

Copco No. 1 Dam and Reservoir (RM 198.6 to 203.1), J.C. Boyle Dam and Reservoir (RM 220.4 to 228.3), Keno Dam and Reservoir (RM 233 to 253.1), and East Side and West Side facilities (both in Link River at RM 253.1 to 254.3).

The ''covered activities'' included in the plan consist of a variety of activities at the seven facilities listed above that are necessary to generate hydroelectric power and to maintain these facilities. These include: Operate and maintain spill gates for regulation and releases of flows; operate and maintain canals, flowlines, and other water conveyance systems; operate and maintain penstocks, turbines, and powerhouse facilities; operate and maintain fish bypass systems; and regulate water levels and flows necessary to maintain minimum reservoir elevations, river flows, and ramping rates.

The applicant proposes to avoid, minimize, and mitigate the effects to the covered species associated with the covered activities by fully implementing the plan. The following minimization and mitigation measures will be implemented as part of the plan: Take of listed species will be substantially reduced by shutting down the East Side and West Side developments within 30 days of issuance of the ITP. These facilities will remain substantially shut down until eventual decommissioning of the facilities as determined by the Federal Energy Regulatory Commission. Mitigation of take will result from funding of restoration projects and other activities that will benefit the recovery of the species.

Under the proposed action alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the activities described above and in more detail in the plan.

Environmental Review

As described in our EA, we have made the preliminary determination that approval of the proposed plan and issuance of the permit would qualify as Finding of No Significant Impact (FONSI) under NEPA (42 U.S.C. 4321 et seq.), as provided by Federal regulations (40 CFR 1500, 5(k), 1507.3(b)(2), and 1508.4) and the Department of the Interior Manual (516 DM 2 and 516 DM 8). Our EA describes the project effects on all potential resources that could be adversely affected, including water resources (hydrology and water quality); biological resources (Lost River and shortnose suckers, anadromous fishes, and other fishes); socioeconomics (local employment, recreation, renewable energy, land use, and development); environmental justice; and cultural resources. It also includes an analysis of alternatives, and other required analyses such as unavoidable adverse effects, irreversible and irretrievable commitments of resources, short-term uses versus long-term productivity and cumulative effects, and the environmentally preferable alternative (the proposed project).

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the subject area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Identification of any other environmental issues that should be considered with regard to the proposed development and permit action.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

We will identify in the FONSI if we need to prepare further NEPA documentation. We will also consider public comments on the draft EA when making the final determination on whether to prepare additional NEPA documents on the proposed action.

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 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.

Availability of Documents

You may obtain copies of the permit application, plan, and EA from the individuals in **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are available for public inspection, by appointment, during regular business hours, at the Klamath Falls Fish and Wildlife Office (see **ADDRESSES**), and on our Web site at *www.fws.gov/klamathfallsfwo/.*

Next Steps

We will evaluate the permit application; including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the Lost River sucker and the shortnose sucker resulting from the implementation of the covered activities described in the plan. We will make the final permit decision no sooner than 30 days after the date of this notice.

Authority

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.;* NEPA), and its implementing public involvement regulations in the Code of Federal Regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6), as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Act).

Dated: January 22, 2013.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region.

[FR Doc. 2013–01664 Filed 1–25–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO620000.L18200000.XH0000]

Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request public nominations for the Bureau of Land Management (BLM) Resource Advisory Councils (RAC) that have member terms expiring this year. The RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas. The BLM will accept public nominations for 45 days after the publication of this notice.

DATES: All nominations must be received no later than March 14, 2013.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** below for the addresses of BLM State Offices accepting nominations.

FOR FURTHER INFORMATION CONTACT: Twinkle Thompson-Seitts, U.S. Department of the Interior, Bureau of Land Management, Correspondence, International, and Advisory Committee Office, 1849 C Street NW., MS–MIB 5070, Washington, DC 20240; 202–208–7301.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of State, county, or local elected office, employees of a State agency responsible for management of natural resources, representatives of Indian tribes within or adjacent to the area for which the council is organized, representatives of academia who are employed in natural sciences, and the public-at-large. Individuals may nominate themselves or others. Nominees must be residents of the State in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

The following must accompany all nominations:

—Letters of reference from represented interests or organizations;
—A completed Resource Advisory Council application; and
—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, BLM state offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the state. Nominations and completed applications for RACs should be sent to the appropriate BLM offices listed below:

Alaska

Alaska RAC

Thom Jennings, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, AK 99513, 907–271–3335.

Arizona

Arizona RAC

Dorothea Boothe, Arizona State Office, BLM, One North Central Avenue, Suite 800, Phoenix, AZ 85004, 602–417–9219.

California

Central California RAC

David Christy, Mother Lode Field Office, BLM, 5152 Hillsdale Circle, El Dorado Hills, CA 95762, 916–941–3146.

Northeastern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, CA 96130, 530–252–5332.

Northwestern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, CA 96130, 530–252–5332.

Colorado

Front Range RAC

Denise Adamic, Royal Gorge Field Office, BLM, 3028 East Main Street, Cañon City, CO 81212, 719–269–8553.

Northwest RAC

David Boyd, Colorado River Valley Field Office, BLM, 2300 River Frontage Road, Silt, CO 81652, 970–876–9008.

Southwest RAC

Shannon Borders, Southwest District Office, BLM, 2465 South Townsend Avenue, Montrose, CO 81401, 970–240–5399.

Idaho

Boise District RAC

Marsh Buchanan, Boise District Office, BLM, 3948 Development Avenue, Boise, ID 83705, 208–384–3393.

Coeur d'Alene District RAC

Suzanne Endsley, Coeur d'Alene District Office, BLM, 3815 Schreiber Way, Coeur d'Alene, ID 83815, 208–769–5004.

Idaho Falls District RAC

Sarah Wheeler, Idaho Falls District Office, BLM, 1405 Hollipark Drive, Idaho Falls, ID 83401, 208–524–7613.

Twin Falls District RAC

Heather Tiel-Nelson, Twin Falls District Office, BLM, 2536 Kimberly Road, Twin Falls, ID 83301, 208–736–2352.

Montana and Dakotas

Central Montana RAC

Craig Flentie, Lewistown Field Office, BLM, 920 Northeast Main Street, Lewistown, MT 59457, 406–538–1943.

Dakotas RAC

Mark Jacobsen, Miles City Field Office, BLM, 111 Garryowen Road, Miles City, MT 59301, 406–233–2800.

Eastern Montana RAC

Mark Jacobsen, Miles City Field Office, BLM, 111 Garryowen Road, Miles City, MT 59301, 406–233–2800.

Western Montana RAC

David Abrams, Butte Field Office, BLM, 106 North Parkmont, Butte, MT 59701, 406–533–7617.

Nevada

Mojave-Southern Great Basin RAC; Northeastern Great Basin RAC; Sierra Front Northwestern Great Basin RAC

Chris Rose, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, NV 89502, 775–861–6480.

New Mexico

Albuquerque District RAC

Chip Kimball, Albuquerque District Office, BLM, 435 Montano NE., Albuquerque, NM 87107, 505–761–8734.

Farmington District RAC

Bill Papich, Farmington District Office, BLM, 6251 College Boulevard, Farmington, NM 87402, 505–564–7620.

Las Cruces District RAC

Rena Gutierrez, Las Cruces District Office, BLM, 1800 Marquess St., Las Cruces, NM 88005, 575–525–4338.

Pecos District RAC

Betty Hicks, Pecos District Office, BLM, 2909 West Second Street, Roswell, NM 88201, 575–627–0242.

Oregon/Washington

Eastern Washington RAC; John Day-Snake RAC; Southeast Oregon RAC

Stephen Baker, Oregon State Office, BLM, 333 SW., First Avenue, P.O. Box 2965, Portland, OR 97204, 503–808–6306.

Utah

Utah RAC

Sherry Foot, Utah State Office, BLM, 440 West 200 South, Suite 500, P.O. Box 45155, Salt Lake City, UT 84101, 801–539–4195.

Certification Statement: I hereby certify that the BLM Resource Advisory Councils are necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Mike Pool,

Acting Director.

[FR Doc. 2013–01667 Filed 1–25–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB00000.L17110000.PH0000.L.X.SS.020H0000.13XL1109AF; HAG13–0043]

Call for Nominations for the Steens Mountain Advisory Council, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) requests public nominations for five persons to serve on the Steens Mountain Advisory Council. Citizens who serve on these groups provide advice and recommendations to the BLM on land use planning and management of the Steens Mountain Cooperative Management and Protection Area. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: All nominations must be received no later than February 27, 2013.

ADDRESSES: Send completed Advisory Council nominations to BLM Burns District Office; 28910 Highway 20 West; Hines, OR 97738–9424. Nomination forms are available at the BLM Burns District Office, or online at *http://www.blm.gov/or/rac/steensac.php.*

FOR FURTHER INFORMATION CONTACT: Tara Martinak, Public Affairs Specialist, BLM Burns District Office, 28910 Highway 20 West, Hines, OR 97738–9424, 541–573–4519, or email *tmartina@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Any individual may nominate himself/herself or others to serve on the Council. Positions currently open or with terms expiring in 2013 include a member of the Burns Paiute Tribe, a representative of the State government to serve as a liaison to the advisory council, a representative of a State environmental organization, a person interested in fish and recreational fishing in the Cooperative Management and Protection Area (CMPA), a recreation permit holder or representative of a commercial recreation operation in the CMPA, and a private landowner within the CMPA. All nomination applications should include letters of reference and/or recommendations from the represented interests or organizations and any other information explaining the nominee's qualifications (e.g., resume, curriculum vitae). The BLM Burns District will collect the nomination forms and letters of reference and distribute them to the officials responsible for submitting nominations (County Court of Harney County, the Governor of Oregon, and the BLM). The BLM will then forward recommended nominations to the Secretary of the Interior, who appoints Council members.

The Steens Mountain Advisory Council (SMAC) was initiated on August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106–399). The SMAC provides representative counsel and advice to the BLM regarding new and unique approaches to management of the land within the bounds of the Steens Mountain CMPA; recommending cooperative programs and incentives for landscape management that meet human needs, and the maintenance and improvement of the ecological and economic integrity of the area. The BLM is publishing this notice under Section 9 (a)(2) of the Federal Advisory Committee Act (FACA), to seek public nominations for membership on the SMAC. Applicants must be qualified through education, training, knowledge, or experience to give informed advice regarding an industry, discipline, or interest to be represented. Nominees must also demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from serving on all FACA and non-FACA boards, committees or councils.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

Brendan Cain,

Burns District Manager.

[FR Doc. 2013–01666 Filed 1–25–13; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON04000 L16100000.DP0000]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement and Resource Management Plan Amendment for the Roan Plateau, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Colorado intends to prepare a Supplement to the Final Environmental Impact Statement (EIS) associated with the development of the Roan Plateau Resource Management Plan (RMP) Amendment. The Roan Plateau RMP Amendment will amend two existing RMPs: the Glenwood Springs Field Office RMP and the White River Field Office RMP. The Supplemental EIS will analyze options for the management of the Roan Plateau Planning Area, including analysis of the ''Community

Alternative'' previously presented to the BLM, consistent with the June 22, 2012, Opinion and Order of the United States District Court for the District of Colorado and Secretary Salazar's commitment to develop the public's oil and gas resources responsibly and in the right places. These and other issues relevant to the proposed Roan Plateau RMP Amendment will be identified through scoping. By this notice the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues for analysis.

DATES: This notice initiates the public scoping process for the Draft Supplemental EIS, building upon the scoping previously completed for the Roan Plateau RMP Amendment. Comments on issues and planning criteria identified in this NOI may be submitted in writing until February 27, 2013. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the BLM Web site at: *http://www.blm.gov/co/st/en/fo/crvfo.html.* In order to be included in the scoping process, all comments must be received prior to the close of the 30-day scoping period or 30 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to Roan Plateau RMP Amendment by any of the following methods:

- *Web Site: www.blm.gov/co/st/en/BLM_Programs/land_use_planning/rmp/roan_plateau.html.*
- *Email: roanplateau@blm.gov.*
- *Fax:* 970–876–9090.
- *Mail:* Bureau of Land Management, Colorado River Valley Field Office, Roan Plateau Comments, 2300 River Frontage Road, Silt, CO 81652.

Documents pertinent to this proposal may be examined at the Colorado River Valley Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Steve Bennett, Field Manager, telephone 970–876–9000; see address above; email *roanplateau@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Colorado intends to develop a new proposed Amendment to the Roan Plateau RMP Amendment of the Glenwood Springs and White River RMPs and to prepare the necessary NEPA analysis of environmental impacts associated with the management of the Roan Plateau Planning Area, including proposed oil and gas development on and around the Roan Plateau. This notice announces the beginning of the scoping process for the Draft Supplemental EIS, and seeks public input on issues and planning criteria identified below. The Planning Area, which is in west-central Colorado, includes approximately 73,602 acres of land (Federal surface, Federal mineral estate, or both), and is located primarily in Garfield County with a small portion in southern Rio Blanco County.

The National Defense Authorization Act for Fiscal Year 1997, Public Law 105–85 (the ''Transfer Act'') effected transfer of the Roan Plateau's Naval Oil Shale Reserves 1 and 3 from the Department of Energy to the Department of the Interior. The Transfer Act directs the transferred lands to be managed in accordance with FLPMA and other laws applicable to public lands. In addition, the Transfer Act directed the Secretary to enter into leases with one or more private entities ''as soon * * * as practicable'' for the purpose of exploration, development, and production of petroleum.

The development of the Roan Plateau RMP Amendment began with scoping in 2000. The Draft EIS was published in November 2004. The Final EIS was published in August 2006. The BLM then issued two Records of Decision, one in June 2007 and a second, pertaining to Areas of Critical Environmental Concern, in March 2008. A lawsuit filed in July 2008 that challenged the BLM's oil and gas leasing and management decisions for the Roan Plateau resulted in a June 22, 2012, ruling by the United States District Court for the District of Colorado. The Court set aside the Plan amendment and remanded the matter to the BLM for further action in accordance with the Court's decision. In particular, the Court found that the Final EIS was deficient insofar as it (i) failed sufficiently to address the ''Community Alternative'' that various local governments, environmental organizations, and individual members of the public recommended; (ii) failed sufficiently to address the cumulative air quality impacts of the Plan amendment decision in conjunction with anticipated oil and gas development on private lands outside the Roan Plateau Planning Area; and (iii) failed adequately to address the issue of potential ozone impacts from proposed oil and gas development. In view of the Court's ruling and Secretary Salazar's commitment to responsibly develop oil and gas resources on the public lands in the right places and in the right ways, the BLM determined that a new proposed Plan Amendment and a supplemental analysis under NEPA are warranted. The purpose of the public scoping process is to determine relevant issues, including those described by the District Court ruling, that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. At present, the BLM, together with other Federal, state and local agencies and other stakeholders, have identified the following preliminary issues for analysis: oil and gas development on and around the Roan Plateau, directional drilling from the base of the Roan Plateau, air quality impacts, the effect of critical habitat designations for endangered and threatened plants, and Greater Sage-Grouse habitat. Preliminary planning criteria include:

(1) The Roan Plateau RMP Amendment will comply with NEPA, FLPMA, the Transfer Act, and all other applicable laws, regulations, and policies;

(2) The Roan Plateau RMP Amendment will consider reasonable alternatives in accordance with regulations at 43 CFR part 1610 and 40 CFR part 1500;

(3) Decisions in the Roan Plateau RMP Amendment will only apply to public lands and the mineral estate managed by the BLM;

(4) The Roan Plateau RMP Amendment and supplementation process will follow the BLM Land Use Planning Handbook H–1601–1 and the BLM NEPA Handbook H–1790–1 where appropriate;

(5) The Roan Plateau RMP Amendment planning process will include broad-based public participation;

(6) The Roan Plateau RMP Amendment process will consider the identification and management of lands with wilderness characteristics;

(7) The Roan Plateau RMP Amendment process will include coordination with state, local, and tribal governments to ensure that BLM considers provisions of pertinent plans, seeks to resolve any inconsistencies among state, local and tribal plans, and provides ample opportunities for state, local and tribal governments to

comment on the development of the Plan amendment;

(8) The Roan Plateau RMP Amendment process will rely on available inventories of the lands and resources as well as data gathered during the planning process;

(9) The Roan Plateau RMP Amendment process will follow requirements to address Greater Sage-Grouse habitat and conservation as outlined in the National Sage-Grouse Habitat Conservation Strategy;

(10) The Roan Plateau RMP Amendment process will use Geographic Information Systems and incorporate geospatial data to the extent practicable and Federal Geographic Data Committee standards and other applicable BLM data standards will be followed;

(11) The Roan Plateau RMP Amendment will incorporate and observe the principles of multiple use and sustained yield;

(12) The Roan Plateau RMP Amendment process will involve consultation with Native American tribal governments;

(13) The Roan Plateau RMP Amendment will recognize valid existing rights; and

(14) The Roan Plateau RMP Amendment and SEIS will use analysis in the Roan Plateau Final EIS to the extent possible and practicable.

You may submit comments on relevant issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above.

The BLM will use the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, state, and local agencies, along with tribes and other stakeholders that may be interested in, or affected by, the proposed action the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft Supplemental EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the Roan Plateau RMP Amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: minerals and geology, air resources, wildlife and fisheries, rangeland management, forestry, outdoor recreation, archaeology, paleontology, lands and realty, hydrology, soils, sociology, and economics.

Authority: 40 CFR 1501.7, 43 CFR 1610.2 and 43 CFR 1610.5–5.

John Mehlhoff,

Acting BLM Colorado State Director.

[FR Doc. 2013–01698 Filed 1–25–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Adjustment of Service Fees for Outer Continental Shelf Activities

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Adjustment of Service Fees.

SUMMARY: This notice informs all lessees, operators, permittees, and right-of-way (ROW) holders that certain BOEM fees are being adjusted for inflation, as provided for in BOEM regulations at 30 CFR § 550.125 and 30 CFR § 556.63.

DATES: *Effective Date:* This Adjustment of Service Fees becomes effective on February 2, 2013.

ADDRESSES: Questions related to the calculations underlying the cost recovery fee adjustments should be directed to: U.S. Department of the Interior, Bureau of Ocean Energy Management, Economics Division, 381 Elden Street, HM 3310, Herndon, Virginia 20170.

FOR FURTHER INFORMATION CONTACT: Peter Meffert, Office of Policy, Regulations and Analysis, (703) 787–1610 or at *Peter.Meffert@BOEM.gov.*

SUPPLEMENTARY INFORMATION: Regulations at 30 CFR § 550.125 and 30 CFR § 556.63 provide the authority for BOEM to adjust a number of its cost recovery service fees on an annual basis. These fees were last updated in 2008, with **Federal Register** Notice 73 FR 49943. BOEM is now adjusting various cost recovery fees to reflect inflation since the last update.

This notice informs all relevant parties that the fees are being adjusted in accordance with BOEM regulations at 30 CFR § 550.125 and 30 CFR § 556.63. The proposed *2012 Fee Amount* is based on the Implicit Price Deflator value of 6.72 percent; this value is based on inflation from 2007 through 2011.

The inflation rate between any two years is calculated as the percentage difference between the measure of the level of prices for a designated year (e.g., 2011) and some previous year (e.g., 2007) of all new, domestically produced, final goods and services in the economy for the designated year (e.g., 2011), as contained in the Department of Commerce's Bureau of Economic Analysis (BEA) Table 1.1.9, Implicit Price Deflators for Gross Domestic Product, available at *http://www.bea.gov/national/pdf/dpga.pdf.* We expect BEA to revise the rate during future updates and, as in the last few years, we expect revisions to be upward. Even if BEA revises the inflation rate,

BOEM will retain the published fee schedule until BOEM's next fee recalculation.

The following table highlights those cost recovery fees that are affected by this notice:

Plan/permit action	2008 fee amount	Citation	2012 fee amount
Conservation Information Document	$25,629	§ 550.296(a)	$27,348.
Designation of Operator (change of)	$164	§ 550.143(d)	$175.
Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD).	$3,971 for each well proposed; no fee for revisions.	§ 550.24	$4,238 for each well proposed; no fee for revisions.
Non-Required Document Filing Fee	$27	§ 556.63	$29.
Exploration Plan (EP)	$3,442 for each surface location; no fee for revisions.	§ 550.211(d)	$3,673 for each surface location; no fee for revisions.
Record Title/Operating Rights (Transfer)	$186	§ 556.63	$198.
Right-of-Use and Easement (RUE) for State lessee	$2,569	§ 550.165	$2,742.

Authority: 43 U.S.C. 1331–1356 (2002).

Dated: January 18, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–01671 Filed 1–25–13; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Cancellation of Environmental Impact Statement/Environmental Impact Report on the Sacramento River Water Reliability Study, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of cancellation.

SUMMARY: The Bureau of Reclamation and the Placer County Water Agency are canceling plans to continue work on a joint environmental impact statement/environmental impact report (EIS/EIR) on implementing the Sacramento River Water Reliability Study.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon McHale, Bureau of Reclamation, at (916) 989–5086.

SUPPLEMENTARY INFORMATION: The Sacramento River Water Reliability Study (SRWRS) was a water supply plan consistent with the Water Forum Agreement (April 24, 2000) objectives of pursuing a Sacramento River diversion to meet water supply needs of the Placer-Sacramento region and promoting ecosystem preservation along the lower American River. The reason for canceling is that the non-federal sponsor, Placer County Water Agency, does not have the capital improvement funding to construct a project due to the decline in the regional and statewide economy.

The SRWRS cost-sharing partners had identified their long-term needs for additional water supplies to meet growing water supply demands and reliability objectives in their respective service areas. Placer County Water Agency, Sacramento Suburban Water District, and the cities of Roseville, and Sacramento were the cost-sharing partners.

Reclamation published a notice of intent to prepare the EIS/EIR on July 30, 2003 (68 FR 44811).

Dated: December 11, 2012.

Anastasia T. Leigh,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 2013–01662 Filed 1–25–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Porter,* Civil Action No. 4:09–cv–170–SEB–DML, was lodged with the United States District Court for the Southern District of Indiana, New Albany Division, on January 18, 2013.

This proposed Consent Decree concerns a complaint filed by the United States against Wesley Porter, Wes Porter Development Company, LLC, Temple and Temple Excavating and Paving, Inc., and Robert Jason Shumate, pursuant to Sections 309 and 404 of the Clean Water Act, 33 U.S.C. 1319 and 1344, to obtain injunctive relief from the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and/or to perform mitigation.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Perry M. Rosen, United States Department of Justice, Environment and Natural Resources Division, P.O. Box 7611, Washington, DC 20044, and refer to *United States* v. *Porter,* DJ # 90–5–1–1–18341.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of Indiana, 121 West Spring Street, New Albany, IN 47150. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2013–01633 Filed 1–25–13; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

NOTICE: (12–004).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Frances Teel, National

Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, *Frances.C.Teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In accordance with the President's initiative to create opportunities to advance science, technology, engineering, and mathematics (STEM) education, this clearance request pertains to the collection of information associated with the administration of electronic application/registration/volunteer forms, parental consent forms, media release forms, safety rules acknowledgement forms, and participant feedback forms for the NASA Great Moonbuggy Race. This vehicular engineering experience connects classroom training to tangible activities that enable practical application of STEM disciplines, cultivates innovative thinking, and embraces teamwork. This event is inspired by the original lunar rover that piloted across the Moon's surface in the early 1970's during Apollo 15, 16, and 17 missions. Participation is voluntary and targets high school and college students. Registration is required to participate.

II. Method of Collection

Electronic and Paper.

III. Data

Title: NASA Great Moonbuggy Race.

OMB Number: 2700–XXXX.

Type of review: Existing collection in use without OMB Control Number.

Affected Public: Individuals or households, local government, private sector.

Estimated Number of Respondents: 1,765.

Estimated Time per Response: Variable.

Estimated Total Annual Burden Hours:

Estimated Total Annual Cost: $16,460.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2013–01648 Filed 1–25–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

National Science Board

Sunshine Act Meetings; Notice

The National Science Board's Executive Committee, 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 in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Thursday, January 31, 2013, 8:30–9:00 a.m. EST.

SUBJECT MATTER: (1) Chairman's opening remarks; and (2) Discussion of agenda for February 2013 meeting.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors 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 room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is: Dedric Carter, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8002.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2013–01813 Filed 1–24–13; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0014]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; issuance and request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to its Enforcement Policy (Enforcement Policy or Policy) to incorporate changes directed by the Commission, to make other changes proposed and evaluated by the staff, and to make minor edits.

DATES: This revision is effective on January 28, 2013. Comments on this revision should be submitted on or before February 27, 2013, and will be considered by the NRC before the next Enforcement Policy revision.

ADDRESSES: You may access information and comment submissions related to this revision to the Policy by searching *http://www.regulations.gov* under Docket ID NRC–2013–0014. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0014. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677. For additional direction on accessing information and submitting comments, see ''Accessing Information and

Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Nicole Coleman, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1048, email: *Nicole.Coleman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0014 when contacting the NRC about the availability of information for this revision of the Policy. You may access information related to this revision of the Policy, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0014.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access public documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* 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. The NRC Enforcement Policy is available in ADAMS under Accession No. ML12340A295.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The NRC maintains the Enforcement Policy on its Web site at *http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.*

B. Submitting Comments

Please include Docket ID NRC–2013–0014 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in you comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The purpose of this Policy revision is to: (1) Incorporate changes directed by the Commission in the Staff Requirements Memorandum (SRM), SRM–SECY–09–0190, ''Revisions to the Nuclear Regulatory Commission Enforcement Policy,'' December 30, 2009 (ADAMS Accession No. ML093200520);(2) make other changes proposed and evaluated by the staff; and (3) make minor edits.

On December 30, 2009, in SECY–09–0190, the NRC staff submitted to the Commission a proposed major revision of the Enforcement Policy. In SECY–09–0190, the NRC staff committed to provide an opportunity for public comments on the revision after it had been in effect for about 18 months. In SRM–SECY–09–0190, the Commission approved the revised Policy and directed the NRC staff to evaluate certain items for inclusion in the next proposed revision to the Policy. On September 30, 2010 (75 FR 60485), the NRC published the revised Policy in the **Federal Register**.

In addition to the direction given to the NRC staff in SRM–SECY–09–0190, the NRC staff evaluated other Policy changes that were presented to the Commission for approval and inclusion in the 2012 Policy revision.

The NRC staff solicited comments on proposed changes to the Policy in documents published in the **Federal Register** on September 6, 2011 (76 FR 54986), and December 6, 2011 (76 FR 76192).

III. Summary of Substantive Changes to the Enforcement Policy

1. Credit for Fuel Cycle Licensee Corrective Action Programs

The NRC is revising Section 2.3.2, Non-Cited Violation, to provide fuel cycle licensees (and all other licensees or nonlicensees) with credit for a corrective action program (CAP) for certain severity level (SL) IV violations. Presently, this CAP credit for certain SL IV violations is only available to power reactor licensees. This revision would allow fuel cycle licensees (and all other licensees or nonlicensees) with credit for an NRC-approved CAP to have NRC-identified SL IV violations treated as noncited violations (NCVs) if certain other criteria are met.

2. Noncited Violation Credit to Nonlicensees

The NRC is revising Section 2.3.2.b, All Other Licensees, to clarify that NCVs may also be issued to nonlicensees when they meet the NCV criteria stated in Section 2.3.2.b.

3. Civil Penalties

The NRC is making several changes to Section 2.3.4, Civil Penalty, related to the civil penalty assessment process. Under the current Policy, the NRC will assess at least a base civil penalty for violations involving loss of control of radioactive materials. The NRC is revising the Policy to remove such language. The intent is to maintain the existing lost source policy to issue at least a civil penalty while giving the NRC staff the flexibility to disposition those cases where a licensee has lost NRC regulated material, but took immediate action to recover it, in a timely manner, with little or no risk to the public while the material was not in the licensee's control. In such cases where loss of control is the issue, rather than actual loss of material, the normal civil penalty assessment process would be used. Notwithstanding the normal civil penalty assessment process, the Policy will also allow the use of discretion and imposition of a civil penalty in cases in which a licensee has lost required control of its regulated radioactive material.

The NRC is revising the Policy to also provide criteria and examples for the use of daily civil penalties. This revision will provide factors for the NRC staff to consider when evaluating the appropriateness of daily civil penalties for continuing violations of at least moderate significance (*i.e.,* at least a SL III).

The NRC is revising the Policy to point out that civil penalties are considered for SL I, II, and III violations. However, this revision emphasizes that the civil penalty process described in Section 2.3.4 should be followed to determine the appropriateness of any civil penalty.

The NRC is also adding a new section, Section 4.3.1, Civil Penalties to Individuals Who Release Safeguards Information, to provide an assessment tool for the NRC staff to determine civil penalties for violations of unauthorized release of safeguards information (SGI) by individuals. The NRC is also revising Section 8.0, Table of Base Civil Penalties, to include a base civil penalty of $3,500 for individuals who release SGI.

4. Orders

The NRC is revising Section 2.3.5, Orders, to clarify that Orders may be immediately effective, without prior opportunity for a hearing, whenever the NRC determines that the public health, safety interest, or common defense and security so requires, or if the violation or conduct causing the violation is willful.

5. Inaccurate and Incomplete Information

The NRC is adding a new Section 2.3.11, Inaccurate and Incomplete Information, to provide guidance to the NRC staff for issues involving inaccurate and incomplete information. The wording for this new section is taken essentially verbatim from the November 28, 2008, version of the Policy, Section IX, Inaccurate and Incomplete Information. This section was not included in the September 30, 2010, revision to the Policy.

6. Reporting of Defects

The NRC is adding a new Section 2.3.12, Reporting of Defects and Noncompliance, to provide guidance to the NRC staff for issues involving contractors that supply products or services for use in nuclear activities. The wording for this new section is taken essentially verbatim from the November 28, 2008, version of the Policy, Section X, Enforcement Action Against Nonlicensees. This section was not included in the September 30, 2010, revision to the Policy.

7. Predecisional Enforcement Conference

The NRC is revising Section 2.4.1, Predecisional Enforcement Conference, in its entirety to provide clear and consistent guidance that allows licensees and individuals to respond to apparent violations before final escalated enforcement action is taken. The revised text states, in part, that to the extent practicable, the NRC will consider the licensee's response before taking enforcement action.

8. Alternative Dispute Resolution

The NRC is revising Section 2.4.3, Alternative Dispute Resolution, to update the alternative dispute resolution guidance.

9. Enforcement Actions Involving Individuals

The NRC is revising Section 4.0, Enforcement Actions Involving Individuals, to provide guidance for handling potentially damaging or disqualifying information involving an individual's trustworthiness and reliability, which may affect an individual's unescorted access authorization to licensee facilities.

10. Violation Examples

The NRC is revising Section 6.0, Violation Examples, by adding several new violation examples and revising several of the current examples. The sub-sections within Section 6.0 that are being revised include the violation examples related to licensed operators, facility construction (parts 50 and 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), licensees and fuel cycle facilities), emergency preparedness, inaccurate and incomplete information, and failure to make a required report. The NRC is adding violation examples related to export and import activities.

11. Glossary

The NRC is revising the following definitions in Section 7.0, Glossary: actual consequences, apparent violation, lost source policy, substantial potential for exposures or releases in excess of the applicable limits in 10 CFR part 20, and traditional enforcement. The NRC is also adding definitions for certificate holders and nonlicensees for purposes of the Policy.

12. Table of Base Civil Penalties

In Section 8.0, Table A, Table of Base Civil Penalties, the NRC is revising the title of Category ''c'' by replacing the wording ''Fuel fabricators authorized to possess Category III quantities of SNM [special nuclear material] * * *'' with the wording ''All other fuel fabricators, including facilities under construction * * *''. This change will ensure that Table A addresses fuel facilities under construction.

IV. Procedural Requirements

Paperwork Reduction Act Statement

This Policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Number 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 22nd day of January 2013.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 2013–01672 Filed 1–25–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–151; NRC–2013–0017]

Notice of License Termination for University of Illinois Advanced TRIGA Reactor, License No. R–115

The U.S. Nuclear Regulatory Commission (NRC) is noticing the termination of Facility Operating License No. R–115, for the University of Illinois Advanced TRIGA Reactor (ATR).

The NRC has terminated the license of the decommissioned ATR, at the Nuclear Research Laboratory (NRL) on the campus of the University of Illinois (U of IL) in Urbana, Illinois, and has released the site for unrestricted use. The licensee requested termination of the license in a letter to the NRC dated October 9, 2012 (ADAMS Accession Number ML12345A245). The ATR provided training for Nuclear Engineering students and various services for researchers in other departments at the U of IL. The University ceased operation of the facility in 1998, and the reactor fuel was removed in 2004. In 2007, the NRC approved the NRL Decommissioning Plan (DP) which required complete removal of the reactor, systems, and demolition of the facility.

The NRL underwent decommissioning activities from October 2011 through May 2012. In July

2012, the licensee conducted a Final Status Survey (FSS) in the soils of the building footprint per the NRC reviewed FSS Plan. The Class 1 survey unit consisted of the exposed soils in the building footprint and the Class 2 survey unit was the immediate area surrounding the excavation area.

The U of IL submitted the FSS report with the request for license termination for the ATR on October 9, 2012 (ADAMS Accession No. ML12345A245). The NRC reviewed the FSS report and determined that the survey data was in accordance with the Decommissioning Plan and the FSS Plan. The report documented that compliance with the criteria in the NRC-approved decommissioning plan for both reactors had been demonstrated.

Additionally, a confirmatory survey including soil samples and a gamma walkover survey was completed by the NRC Region III staff. Their conclusions, as noted in the NRC's Inspection Report 05000151/12005 (ADAMS Accession No. ML12307A330), were that ''the results of the confirmatory surveys were consistent with the licensee's final status survey results and below the required cleanup levels, or DCGLs,'' and ''the licensee adequately classified the survey units and applied the correct DCGLs in accordance with the FSSP.''

Pursuant to 10 CFR 50.82(b)(6), the NRC staff has concluded that ATR at the NRL has been decommissioned in accordance with the approved decommissioning plans and that the terminal radiation surveys and associated documentation demonstrate that the facilities and site are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E. Further, on the basis of the decommissioning activities carried out by the U of IL, the NRC's review of the licensee's final status survey report, the results of the NRC's inspections conducted at the NRL, and the results of confirmatory surveys, the NRC has concluded that the decommissioning process is complete and the facilities and sites may be released for unrestricted use. Therefore, Facility Operating License No. R–115 is terminated.

The above referenced documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Reading Room on the Internet at the NRC's Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should call the NRC PDR reference staff at 1–800–397–4209 or 301–415–4737 or email *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of January 2013.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–01673 Filed 1–25–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

Board Votes To Close January 10, 2013, Meeting

By telephone vote on January 10, 2013, members of the Board of Governors of the United States Postal Service met and voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Board determined that no earlier public notice was possible.

MATTERS CONSIDERED: 1. Strategic Issues.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2013–01756 Filed 1–24–13; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30353; File No. 812–14082]

Symetra Life Insurance Company, et al.; Notice of Application

January 22, 2013.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940, as amended (the ''Act''), for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order that would (a) permit certain series of registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts (''UITs'') that are within or outside the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the acquiring company and (b) permit certain series of registered open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Symetra Life Insurance Company (''Symetra''), First Symetra National Life Insurance Company of New York (''First Symetra of NY'' and collectively with Symetra and any insurance company controlling, controlled by, or under common control with Symetra and First Symetra of NY, the ''Insurance Companies''), Symetra Investment Management, Inc. (the ''Manager''), Symetra Mutual Funds Trust (the ''Trust''), and Symetra Securities Inc. (the ''Distributor'').

DATES: *Filing Dates:* The application was filed on October 3, 2012 and amended on January 8, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 18, 2013, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Symetra Life Insurance Company, Symetra Investment Management, Inc., Symetra Mutual Funds Trust, and Symetra Securities,

Inc., 777 108th Avenue NE., Suite 1200, Bellevue, WA 98004, and First Symetra National Life Insurance Company of New York, 260 Madison Avenue, 8th Floor, New York, NY 10016.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or David P. Bartels, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the ''Company'' name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a Delaware statutory trust, registered under the Act as an open-end management investment company, and is comprised of multiple series, each of which has its own investment objective, policies and restrictions.[1] Shares of the Series are not offered directly to the public. Shares of the Series are offered through separate accounts of the Insurance Companies that are registered as UITs under the Act (''Registered Separate Accounts'') or that are exempt from registration under the Act (''Unregistered Separate Accounts,'' and together with the Registered Separate Accounts, ''Separate Accounts'') and serve as the underlying funding vehicles for the variable life insurance contracts and variable annuity contracts (the ''Contracts'') issued by the Insurance Companies. Shares of the Series may also be offered to qualified pension and retirement plans, certain of the general accounts of the Insurance Companies, or to other Series.

2. The Manager is a Washington corporation registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and serves as investment adviser to the Series. The Manager is a wholly-owned subsidiary of Symetra Financial Corporation and is an affiliate of Symetra and First Symetra of NY.

3. The Distributor is a Washington corporation and serves as the Trust's principal underwriter and distributor. The Distributor is registered as a broker-dealer with the Commission and is a member of the Financial Industry Regulatory Authority, Inc. (''FINRA''). The Distributor is a wholly-owned subsidiary of Symetra Financial Corporation and is an affiliate of Symetra and First Symetra of NY. The Distributor also serves as the distributor for the Contracts.

4. Applicants request relief to permit: (a) Certain Series (each, a ''Fund of Funds,'' and collectively, the ''Funds of Funds'') to acquire shares of registered open-end management investment companies and UITs that are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds of Funds (the ''Unaffiliated Investment Companies'' and ''Unaffiliated Trusts,'' respectively, and together, the ''Unaffiliated Funds'');[2] (b) the Unaffiliated Investment Companies, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934, as amended (the ''Exchange Act'', and any such broker or dealer, a ''Broker''), to sell shares of the Unaffiliated Investment Companies to the Funds of Funds in excess of the limitations in section 12(d)(1)(B) of the Act; (c) the Funds of Funds to acquire shares of certain other Series in the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds (the ''Affiliated Funds,'' and together with the Unaffiliated Funds, the ''Underlying Funds'');[3] and (d) the Affiliated Funds, their principal underwriters and any Broker to sell shares of the Affiliated Funds to the Fund of Funds in excess of the limitations in section 12(d)(1)(B) of the Act. Applicants also request an order under sections 6(c) and 17(b) of the Act exempting the transactions described in (a) through (d) above from section 17(a) of the Act to the extent necessary to permit an Underlying Fund that is an affiliated person of a Fund of Funds to sell its shares to, and redeem its shares from, the Fund of Funds.

5. Applicants also request an exemption to the extent necessary to permit a Fund of Funds that invests in Underlying Funds in reliance on section 12(d)(1)(G) of the Act (a ''Section 12(d)(1)(G) Fund of Funds''), and that is eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act, to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').

Applicants' Legal Analysis

A. Investments in Underlying Funds—Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company (an ''acquiring company'') from acquiring shares of another investment company (an ''acquired company'') if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any Broker from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) of the Act if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) of the Act to the extent necessary to permit the Funds of Funds to acquire shares of the Underlying Funds in excess of the limits set forth

[1] Applicants request that the order extend to any existing or future Series of the Trust and any existing or future registered open-end management investment company or series thereof that currently or subsequently is part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust, and is, or will be, advised by the Manager or any other investment adviser controlling, controlled by, or under common control with the Manager (each, a ''Series''). All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] Certain of the Unaffiliated Funds may have received exemptive relief or are otherwise permitted to list and trade their shares on a national securities exchange at negotiated prices (''ETFs'').

[3] Certain of the Underlying Funds may pursue their investment objectives through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the Act. In accordance with condition A.12, a Fund of Funds may not invest in an Underlying Fund that operates as a feeder fund unless the feeder fund is part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as its corresponding master fund or the Fund of Funds. If a Fund of Funds invests in an Affiliated Fund that operates as a feeder fund and the corresponding master fund is not within the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds and Affiliated Fund, the master fund would be an Unaffiliated Fund for purposes of the application and its conditions.

in section 12(d)(1)(A) of the Act and to permit the Unaffiliated Investment Companies and Affiliated Funds, their principal underwriters and any Broker to sell shares of the Unaffiliated Investment Companies and Affiliated Funds to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B) of the Act, which include concerns about undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds, since the Affiliated Funds are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds of Funds. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Fund, applicants state that condition A.1 prohibits the Group [4] and the Subadviser Group [5] from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition A.2 precludes a Fund of Funds, the Manager, Subadviser, promoter or principal underwriter of a Fund of Funds, and any person controlling, controlled by or under common control with any of those entities (each, a ''Fund of Funds Affiliate'') from taking advantage of an Unaffiliated Fund, with respect to transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or the Unaffiliated Fund's investment adviser(s), sponsor, promoter, principal underwriter and any person controlling, controlled by or under common control with any of those entities (each, an ''Unaffiliated Fund Affiliate'').

6. Condition A.5 precludes a Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) from causing an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (an ''Affiliated Underwriting'').[6]

7. As an additional assurance that an Unaffiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to an investment in the shares of the Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute an agreement (the ''Participation Agreement'') stating, without limitation, that their respective boards of directors or trustees (for any entity, the ''Board'') and their investment advisers understand the terms and conditions of the order and agree to fulfill their respective responsibilities under the order. Applicants note that an Unaffiliated Investment Company (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right at all times to reject any investment by a Fund of Funds.[7]

8. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, in connection with the approval of any investment advisory contract under section 15 of the Act, the Board of the Fund, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (for any Board, the ''Independent Trustees''), will find that the advisory fees charged to a Fund of Funds under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that the Manager will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or an affiliated person of the Manager by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

9. Applicants state that, with respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rule 2830''),[8] if any, will be charged either at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to funds of funds as set forth in NASD Conduct Rule 2830.

10. Applicants represent that each Fund of Funds will represent in the Participation Agreement that no Insurance Company sponsoring a Registered Separate Account funding Contracts will be permitted to invest in the Fund of Funds unless the Insurance Company has certified to the Fund of Funds that the aggregate of all fees and charges associated with each Contract that invests in the Fund of Funds, including fees and charges at the Separate Account, Fund of Funds, and Underlying Fund levels, is reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the Insurance Company.

11. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note

[4] The Manager and any person controlling, controlled by or under common control with the Manager, any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Manager or any person controlling, controlled by or under common control with the Manager are, collectively, the ''Group.''

[5] Any investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds (each, a ''Subadviser''), any person controlling, controlled by or under common control with a Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by a Subadviser or any person controlling, controlled by or under common control with the Subadviser are, collectively, the ''Subadviser Group.''

[6] An ''Underwriting Affiliate'' is an officer, director, member of an advisory board, Manager, Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, Manager, Subadviser, member of an advisory board, or employee is an affiliated person. However, any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate.

[7] An Unaffiliated Investment Company, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

[8] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by FINRA.

that an Underlying Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Acquires such securities in compliance with section 12(d)(1)(E) of the Act and either is an Affiliated Fund or is in the same ''group of investment companies,'' as defined in Section 12(d)(G)(ii) of the Act, as its corresponding master fund; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

B. Investments in Underlying Funds—Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and its affiliated persons or affiliated persons of such persons. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under common control and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds may be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) of the Act could prevent an Underlying Fund from selling shares to, and redeeming shares from, a Fund of Funds.[9]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) of the Act if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act, as the terms are fair and reasonable and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.[10] Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

C. Other Investments by Section 12(d)(1)(G) Funds of Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act; (ii) the acquiring company holds only securities of acquired companies that are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered UITs in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered UIT that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Section 12(d)(1)(G) Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Section 12(d)(1)(G) Funds of Funds to invest in Other Investments. Applicants assert that permitting the Section 12(d)(1)(G) Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) of the Act were designed to address.

4. Consistent with its fiduciary obligations under the Act, each Section 12(d)(1)(G) Fund of Funds' Board will review the advisory fees charged by the Section 12(d)(1)(G) Fund of Funds' investment adviser(s) to ensure that the fees are based on services provided that are in addition to, rather than

[9] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[10] To the extent purchases and sales of shares of an ETF occur in the secondary market (and not through principal transactions directly between a Fund of Funds and an ETF), relief from section 17(a) of the Act would not be necessary. The requested relief is intended to cover, however, transactions directly between ETFs and a Fund of Funds. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because the investment adviser to the ETF or an entity controlling, controlled by or under common control with the investment adviser to the ETF is an investment adviser to the Fund of Funds.

duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Section 12(d)(1)(G) Fund of Funds may invest.

Applicants' Conditions:

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

A. Investments in Underlying Funds by Funds of Funds

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group or a Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, then the Group or the Subadviser Group (except for any member of the Group or the Subadviser Group that is a Separate Account) will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Subadviser Group with respect to an Unaffiliated Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or the sponsor (in the case of an Unaffiliated Trust). A Registered Separate Account will seek voting instructions from its Contract holders and will vote its shares of an Unaffiliated Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (i) vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares; or (ii) seek voting instructions from its Contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to ensure that the Manager and any Subadviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of an Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth (a) the party from whom the securities were acquired, (b) the identity of the underwriting syndicate's members, (c) the terms of the purchase, and (d) the information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit of section 12(d)(1)(A)(i) of the Act, the Fund of Funds will execute a Participation Agreement with the Unaffiliated Investment Company stating, without

limitation, that their respective Boards and investment advisers understand the terms and conditions of the order and agree to fulfill their respective responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i), the Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the Requested Order, the Participation Agreement, and such list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged to the Fund of Funds under the advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Manager will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, from an Unaffiliated Fund, other than any advisory fees paid to the Subadviser or an affiliated person of the Subadviser by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will be charged only at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Acquires such securities in compliance with section 12(d)(1)(E) of the Act and either is an Affiliated Fund or is in the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as its corresponding master fund; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

B. Other Investments by Section 12(d)(1)(G) Funds of Funds

1. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Section 12(d)(1)(G) Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01644 Filed 1–25–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30354; File No. 812–14091]

Securian Funds Trust, et al.; Notice of Application

January 22, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Securian Funds Trust (the ''Trust''), Advantus Capital Management, Inc. (''Advantus''), and Securian Financial Services, Inc. (''SFS'') (collectively, the ''Applicants'').

DATES: *Filing Date:* The application was filed on November 7, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 18, 2013 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 400 Robert Street North, St. Paul, MN 55101.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. Advantus, a Minnesota corporation, is a wholly owned subsidiary of Securian Financial Group, Inc. Advantus is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''). Advantus currently serves as the investment adviser to each existing series of the Trust. SFS, a Minnesota corporation, is a wholly owned subsidiary of Securian Financial Group, Inc. SFS is registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'') and serves as the distributor for each existing series of the Trust.

2. Applicants request the exemption to the extent necessary to permit any existing or future series of the Trust or any other existing or future registered open-end management investment company or series thereof that: (i) Is advised by Advantus or an entity controlling, controlled by, or under common control with Advantus (any such adviser, or Advantus, an ''Adviser''); [1] (ii) invests in other registered open-end management investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each, a ''Fund of Funds''), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[2] Applicants also request that the order exempt any entity controlling, controlled by or under common control with SFS that now or in the future acts as principal underwriter with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of trustees will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or 12(d)(1)(G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds of Funds will comply with rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01643 Filed 1–25–13; 8:45 am]

BILLING CODE 8011–01–P

[1] Any other Adviser also will be registered under the Advisers Act.

[2] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68705; File No. SR–NYSEMKT–2013–06]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Suspension of Those Aspects of Rules 36.20—Equities and 36.21—Equities That Would Not Permit Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Following the Aftermath of Hurricane Sandy Until the Earlier of When Phone Service Is Fully Restored or Friday, February 15, 2013

January 22, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor following the aftermath of Hurricane Sandy until the earlier of when phone service is fully restored or Friday, February 15, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and Designated Market Makers (''DMMs'') to use personal portable phone devices on the Trading Floor [3] following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.[4] Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36—Equities requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

On November 5, 2012, although power had been restored to the downtown Manhattan vicinity, other services were not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange were still not fully operational on the Trading Floor, which continued to impact the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36—Equities. Accordingly, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 9, 2012,[5] which was subject to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[6] On November 9, 2012, the Exchange filed an additional extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 16, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[7] On November 19, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, December 14, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[8] The continued extension of the temporary suspension was needed because of the ongoing intermittent phone and Internet service. Specifically, the wired telephone lines and Internet connections for Floor brokers continued to not be functional, many Exchange authorized and provided portable phones continued to not be functional and therefore Floor brokers still could not consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20 and 36.21. On December 13, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, January 18, 2013, again subject to the same terms and conditions of the original temporary suspension that was filed.[9] The Exchange now seeks another extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 because of ongoing telephone and Internet issues.

The Exchange has been advised by its third-party carrier that the damage to the telephone connections continues to be more extensive than previously anticipated. In addition, there has been damage to the Internet connections available to Floor brokers on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to Rule 6A, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

[4] *See* Securities Exchange Act Release No. 68138 (Nov. 1, 2012), 77 FR 66890 (Nov. 7, 2012) (SR–NYSEMKT–2012–59).

[5] *See* Securities Exchange Act Release No. 68162 (Nov. 5, 2012), 77 FR 67720 (Nov. 13, 2012) (SR–NYSEMKT–2012–62).

[6] *See supra* note 4 (notice that describes the terms and conditions of the temporary suspension).

[7] *See* Securities Exchange Act Release No. 68212 (Nov. 9, 2012), 77 FR 69536 (Nov. 19, 2012) (SR–NYSEMKT–2012–66). Because the telephone lines for the DMMs were operational, the Exchange did not need to extend the temporary suspension of Rule 36.30 as it related to DMMs.

[8] *See* Securities Exchange Act Release No. 68272 (Nov. 20, 2012), 77 FR 70871 (Nov. 27, 2012) (SR–NYSEMKT–2012–69). Relief was not extended for DMMs. *See infra* note 11.

[9] *See* Securities Exchange Act Release No. 68451 (Dec. 17, 2012), 77 FR 75681 (Dec. 21, 2012) (SR–NYSEMKT–2012–82). Relief was not extended for DMMs. *See infra* note 11.

Trading Floor, which has adversely impacted service. In particular, the Exchange notes that the lines that support both the wired and wireless phone connections and Internet connections for the Floor brokers are based in an area of lower Manhattan that suffered extensive damage as a result of Hurricane Sandy. The type of damage that was sustained will, in some cases, require the third-party carrier to rebuild the infrastructure that supports these services, rather than engage in repairs of existing lines. While such rebuilding and repairs are in process, the telephone line and Internet connections for Floor brokers still are not fully operational and may not be so for at least another month, possibly more given the type of work that needs to be completed to restore the telephone services.

Because of the ongoing intermittent phone and Internet service, many Exchange authorized and provided portable phones continue to not be functional and therefore many Floor brokers still cannot consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20—Equities and 36.21—Equities. In addition, many of the wired telephone lines and Internet connections for Floor brokers continue to not be functional. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone and Internet service continues to be intermittent, Floor brokers should be permitted to use personal portable phone devices in lieu of the non-operational Exchange authorized and provided portable phones, wired phone lines, or Internet connections.[10]

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, February 15, 2013.[11] The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities to permit use of the personal portable phones by Floor brokers on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[12]

In particular, as set forth in the prior filings, Floor brokers that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

In addition, to the extent that personal portable phones are used to replicate Internet connections previously approved pursuant to Rule 36 that are not operational on the Trading Floor because of damage sustained by Hurricane Sandy, such use is subject to the same requirements that would otherwise be applicable, including record-retention requirements. This emergency relief is solely meant to maintain the status quo to the extent provided in Rule 36 and not intended to broaden the scope of the activities allowed pursuant to the Rule (*e.g.,* accessing Internet only at the booth). As with all member organization records, such cell phone data records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request. To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

As noted above, because the Exchange is dependent on third-party carriers for both wired and wireless phone service and Internet connections on the Trading Floor, the Exchange does not know how long the proposed temporary suspension of Rules 36.20—Equities and 36.21—Equities will be required. However, based on current estimates, the Exchange understands that phone service may not be fully restored for at least another month, possibly more.

Accordingly, the Exchange proposes that the extension of the temporary suspensions of those aspects of Rule 36—Equities that do not permit Floor brokers to use personal portable phones on the Trading Floor continue until the earlier of when phone service is fully restored or Friday, February 15, 2013.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The

[10] To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

[11] Consistent with the existing relief, [sic] Exchange is not proposing to provide any relief to DMMs in this proposal. Because phone service to DMMs has been restored, the existing relief does not provide for a temporary suspension of Rule 36.30—Equities, which prohibits DMMs from using personal portable phones on the Trading Floor. Similarly, because the off-Floor locations for DMMs have been restored, the existing relief does not provide for the temporary suspension for DMMs to be permitted to communicate with off-Floor personnel who may not be located at their regular physical location. The Exchange is not proposing to provide such relief in this proposal. *See supra* notes 4 and 5 (notices describing the relief previously requested for DMMs).

[12] *See supra* note 4 (notice that describes the terms and conditions of the temporary suspension).

[13] The Exchange will provide notice of this rule filing to Floor brokers, including the applicable recordkeeping and other requirements. If telephone service is fully restored prior to February 15, 2013, the Exchange will notify Floor brokers that the temporary suspension of those aspects of Rule 36—Equities that do not permit the use of personal portable phones on the Trading Floor has expired as of the time that phone service is fully restored.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36—Equities that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that doing so will allow the Exchange to continue uninterrupted, for Floor brokers, the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filings seeking such relief, and to help maintain the status quo, until the earlier of when phone service for Floor brokers is fully restored or February 15, 2013. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2013–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2013–06 and should be submitted on or before February 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68704; File No. SR–NYSE–2013–06]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Temporary Suspension of Those Aspects of Rules 36.20 and 36.21 That Would Not Permit Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Following the Aftermath of Hurricane Sandy Until the Earlier of When Phone Service Is Fully Restored or Friday, February 15, 2013

January 22, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor following the aftermath of Hurricane Sandy until the earlier of when phone service is fully restored or Friday, February 15, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and Designated Market Makers (''DMMs'') to use personal portable phone devices on the Trading Floor [3] following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.[4] Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36 requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

On November 5, 2012, although power had been restored to the downtown Manhattan vicinity, other services were not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange were still not fully operational on the Trading Floor, which continued to impact the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36. Accordingly, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 9, 2012,[5] which was subject to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[6] On November 9, 2012, the Exchange filed an additional extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 16, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[7] On November 19, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, December 14, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[8] The continued extension of the temporary suspension was needed because of the ongoing intermittent phone and internet service. Specifically, the wired telephone lines and internet connections for Floor brokers continued to not be functional, many Exchange authorized and provided portable phones continued to not be functional and therefore Floor brokers still could not consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20 and 36.21. On December 13, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, January 18, 2013, again subject to the same terms and conditions of the original temporary suspension that was filed.[9] The Exchange now seeks another extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 because of ongoing telephone and internet issues.

The Exchange has been advised by its third-party carrier that the damage to the telephone connections continues to be more extensive than previously anticipated. In addition, there has been damage to the internet connections available to Floor brokers on the Trading Floor, which has adversely impacted service. In particular, the Exchange notes that the lines that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to Rule 6A, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

[4] *See* Securities Exchange Act Release No. 68137 (Nov. 1, 2012), 77 FR 66893 (Nov. 7, 2012) (SR–NYSE–2012–58).

[5] *See* Securities Exchange Act Release No. 68161 (Nov. 5, 2012), 77 FR 67704 (Nov. 12, 2012) (SR–NYSE–2012–61).

[6] *See supra* note 4 (notice that describes the terms and conditions of the temporary suspension).

[7] *See* Securities Exchange Act Release No. 68211 (Nov. 9, 2012), 77 FR 69534 (Nov. 19, 2012) (SR–NYSE–2012–64). Because the telephone lines for the DMMs were operational, the Exchange did not need to extend the temporary suspension of Rule 36.30 as it related to DMMs.

[8] *See* Securities Exchange Act Release No. 68271 (Nov. 20, 2012), 77 FR 70862 (Nov. 27, 2012) (SR–NYSE–2012–67). Relief was not extended for DMMs. *See infra* note 11.

[9] *See* Securities Exchange Act Release No. 68452 (Dec. 17, 2012), 77 FR 75683 (Dec. 21, 2012) (SR–NYSE–2012–73). Relief was not extended for DMMs. *See infra* note 11.

support both the wired and wireless phone connections and internet connections for the Floor brokers are based in an area of lower Manhattan that suffered extensive damage as a result of Hurricane Sandy. The type of damage that was sustained will, in some cases, require the third-party carrier to rebuild the infrastructure that supports these services, rather than engage in repairs of existing lines. While such rebuilding and repairs are in process, the telephone line and internet connections for Floor brokers still are not fully operational and may not be so for at least another month, possibly more given the type of work that needs to be completed to restore the telephone services.

Because of the ongoing intermittent phone and internet service, many Exchange authorized and provided portable phones continue to not be functional and therefore many Floor brokers still cannot consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20 and 36.21. In addition, many of the wired telephone lines and internet connections for Floor brokers continue to not be functional. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone and internet service continues to be intermittent, Floor brokers should be permitted to use personal portable phone devices in lieu of the non-operational Exchange authorized and provided portable phones, wired phone lines, or internet connections.[10]

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, February 15, 2013.[11] The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 to permit use of the personal portable phones by Floor brokers on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[12]

In particular, as set forth in the prior filings, Floor brokers that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

In addition, to the extent that personal portable phones are used to replicate internet connections previously approved pursuant to Rule 36 that are not operational on the Trading Floor because of damage sustained by Hurricane Sandy, such use is subject to the same requirements that would otherwise be applicable, including record-retention requirements. This emergency relief is solely meant to maintain the status quo to the extent provided in Rule 36 and not intended to broaden the scope of the activities allowed pursuant to the Rule (*e.g.,* accessing internet only at the booth). As with all member organization records, such cell phone data records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request. To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

As noted above, because the Exchange is dependent on third-party carriers for both wired and wireless phone service and internet connections on the Trading Floor, the Exchange does not know how long the proposed temporary suspension of Rules 36.20 and 36.21 will be required. However, based on current estimates, the Exchange understands that phone service may not be fully restored for at least another month, possibly more.

Accordingly, the Exchange proposes that the extension of the temporary suspensions of those aspects of Rule 36 that do not permit Floor brokers to use personal portable phones on the Trading Floor continue until the earlier of when phone service is fully restored or Friday, February 15, 2013.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36 that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects

[10] To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

[11] Consistent with the existing relief, [sic] Exchange is not proposing to provide any relief to DMMs in this proposal. Because phone service to DMMs has been restored, the existing relief does not provide for a temporary suspension of Rule 36.30—Equities [sic], which prohibits DMMs from using personal portable phones on the Trading Floor. Similarly, because the off-Floor locations for DMMs have been restored, the existing relief does not provide for the temporary suspension for DMMs to be permitted to communicate with off-Floor personnel who may not be located at their regular physical location. The Exchange is not proposing to provide such relief in this proposal. *See supra* notes 4 and 5 (notices describing the relief previously requested for DMMs).

[12] *See supra* note 4 (notice that describes the terms and conditions of the temporary suspension).

[13] The Exchange will provide notice of this rule filing to Floor brokers, including the applicable recordkeeping and other requirements. If telephone service is fully restored prior to February 15, 2013, the Exchange will notify Floor brokers that the temporary suspension of those aspects of Rule 36 that do not permit the use of personal portable phones on the Trading Floor has expired as of the time that phone service is fully restored.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed extension of the temporary suspensions of those aspects of Rules 36.20—Equities [sic] and 36.21—Equities [sic] that would not permit Floor brokers to use personal portable phone devices on the Trading Floor is in direct response to damages in the aftermath of Hurricane Sandy. The proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service, and thus should not have any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that doing so will allow the Exchange to continue uninterrupted, for Floor brokers, the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filings seeking such relief, and to help maintain the status quo, until the earlier of when phone service for Floor brokers is fully restored or February 15, 2013. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–06 and should be submitted on or before February 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01713 Filed 1–25–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8164]

Notification of the First Meetings of the U.S.-Korea FTA Environmental Affairs Council and ECA Environmental Cooperation Commission and Request for Comments on the Meeting Agendas

AGENCY: Department of State.

ACTION: Notice of the first meetings of the Environmental Affairs Council established pursuant to the U.S.-Korea Free Trade Agreement and the Environmental Cooperation Commission established under the U.S.-Korea Environmental Cooperation Agreement and request for comments on the meetings' agendas.

SUMMARY: The Department of State and the Office of the United States Trade Representative (''USTR'') are providing notice that the United States and the Republic of Korea (hereinafter ''Korea'') intend to hold the first meetings of the Environmental Affairs Council (the ''Council'' or ''EAC'') and of the Environmental Cooperation Commission (the ''Commission'' or ''ECC'') in Washington, DC, on February 14, 2013. The United States and Korea established the Council pursuant to Chapter 20 (Environment) of the United States-Korea Free Trade Agreement (''FTA'') and the Commission pursuant to Article 3 of the United States-Korea Environmental Cooperation Agreement (''ECA'').

During the Council meeting, the United States and Korea (collectively the ''Parties'') will discuss their respective implementation of and progress under the Environment Chapter (Chapter 20) of the U.S.-Korea Free Trade Agreement. During the Commission meeting, the Parties will discuss plans for ongoing and future environmental cooperation and will develop an environmental cooperation Work Program for the 2012–2015 period. All interested persons are invited to attend a public session where they will have the opportunity to ask questions and discuss implementation of Chapter 20 and U.S.-Korea environmental cooperation with Council and Commission Members. The public session will be held at 2:00 p.m., February 14, 2013, at the Department of State in room 1105 of the Harry S. Truman Building, 2201 C Street NW., Washington, DC 20520. To attend the public session, please contact Deborah Grout for pre-clearance procedures. For further information please contact Deborah Grout or Leslie Yang (contact information below).

The Department of State and USTR also invite interested agencies, organizations, and members of the public to submit written comments or suggestions regarding the meeting agendas. In preparing comments or suggestions, we encourage submitters to refer to: (1) The United States-Korea Environmental Cooperation Agreement; (2) Chapter 20 (Environment) of the United States-Korea Free Trade Agreement; and (3) the Environmental Review of the United States-Korea Free Trade Agreement. These documents are available at *http://www.state.gov/e/oes/env/trade/c49687.htm.*

DATES: The Council and Commission meetings will be held February 14, 2013 in Washington, DC. To be assured of timely consideration, all written comments or suggestions for the agenda are requested no later than February 6, 2013.

ADDRESSES: Written comments or suggestions should be submitted to both: (1) Deborah Grout, International Relations Officer, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality and Transboundary Issues by email to *GroutDZ@state.gov* with the subject line ''U.S.-Korea EAC/ECC Meetings'' or fax to 202–647–5947; and (2) Leslie Yang, Director for International Environmental Policy, Office of the United States Trade Representative by email to *Leslie_Yang@ustr.eop.gov* with the subject line ''U.S-Korea EAC/ECC Meetings'' or by fax to (202) 395–9517. If you have access to the Internet you can view and comment on this notice by going to: *http://www.regulations.gov/#!home* and searching on docket number DOS–2013–0002.

FOR FURTHER INFORMATION CONTACT: Deborah Grout, International Relations Officer, (202) 647–6777 or Leslie Yang, Director for International Environmental Policy, (202) 395–3167.

SUPPLEMENTARY INFORMATION: Article 20.6.1 of the United States-Korea FTA establishes an Environmental Affairs Council (the ''Council''), which oversees implementation of Chapter 20 (Environment). Article 20.6.2 further provides that meetings of the Council shall include a public session, unless the Parties otherwise agree.

The United States and Korea established the U.S.-Korea Environmental Cooperation Commission when they signed the U.S.-Korea ECA, negotiated in concert with the FTA, on January 23, 2012. In Articles 3 and 4 of the ECA, the Governments state that they plan to meet to develop and update, as appropriate, a Work Program for Environmental Cooperation. The Work Program will identify and outline environmental cooperation priorities, on-going efforts, and possibilities for future cooperation.

Please refer to the Department of State Web site at *http://www.state.gov/e/oes/env/trade/index.htm* and the USTR Web site at www.ustr.gov for more information.

Disclaimer: This Public Notice is a request for comments and suggestions, and is not a request for applications. No granting of money is directly associated with this request for suggestions for the meeting agendas. There is no expectation of resources or funding associated with any comments or suggestions for the agendas.

Dated: January 18, 2013.

George N. Sibley,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2013–01692 Filed 1–25–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Scott Air, LLC for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 2013–1–12), Docket DOT–OST–2012–0178.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Scott Air, LLC fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than February 1, 2013.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2012–0178 and addressed to U.S. Department of Transportation, Docket Operations, (W12–140), 1200 New Jersey Avenue SE., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Catherine J. OToole, Air Carrier Fitness Division (X–56), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9721.

Dated: January 18, 2013.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2013–01711 Filed 1–25–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: FAA Customer Service Surveys

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 8, 2012, vol. 77, no. 153, page 47492. This is a new generic clearance for the purpose of gathering customer satisfaction data directly from customers for a wide variety of services.

DATES: Written comments should be submitted by February 27, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–XXXX

Title: FAA Customer Service Surveys

Form Numbers: There are no FAA forms associated with this generic collection.

Type of Review: New generic information collection.

Background: Executive Order 12862 requires that Federal agencies provide the highest quality service to our customers by identifying them and determining their opinions on our existing services and products. The surveys covered in this clearance will provide the FAA with a means to gather this data directly from our customers. The information obtained will be used to assist in evaluating service delivery and processes. The responses will be voluntary and will not involve information that is required by regulations. There will be no direct cost to the respondents other than their time. The FAA plans to provide an electronic means for responding to the majority of the surveys via the World Wide Web.

Respondents: State and local governments, aviation industry organizations, and the general public.

Frequency: Information will be collected on occasion.

Estimated Average Burden per Response: An average burden of 15 minutes per response.

Estimated Total Annual Burden: We estimate that FAA will survey approximately 55,000 respondents annually during the next three years. Therefore, the estimated total annual burden is 13,750 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on January 22, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–01707 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Airports Grants Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 31, 2012, vol. 77, no. 170, pages 53249–53250. The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Program. Data is used to determine eligibility, ensure proper use of Federal Funds, and ensure project accomplishment.

DATES: Written comments should be submitted by February 27, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0569.

Title: Airports Grants Program.

Form Numbers: FAA forms 5100–100, 5100–101, 5100–108, 5100–125, 5100–126, and 5370–1.

Type of Review: Renewal of an information collection.

Background: Codification of Certain U.S. Transportation Laws at 49 U.S.C. (Public Law 103–272) provides funding for airport planning and development projects at airports included in the National Plan of Integrated Airport Systems. The information required by this program is necessary to protect the Federal interest in safety, efficiency, and utility of the Airport. Data is collected to meet report requirements of 49 CFR 18 for financial management and performance monitoring. Information is collected in the application, and grant agreement amendments; financial management; and performance reporting.

Respondents: Approximately 1,950 sponsors and planning agencies for grant projects.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 6.75 hours.

Estimated Total Annual Burden: 80,569 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and

sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 22, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–01665 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification Procedures for Products and Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 2, 2012, vol. 77, no. 191, page 60166. 14 CFR part 21 prescribes certification standards for aircraft, aircraft engines, propellers appliances and parts. The information collected is used to determine compliance and applicant eligibility. The respondents are aircraft parts designers, manufacturers, and aircraft owners.

DATES: Written comments should be submitted by February 27, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: Kathy.A.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0018

Title: Certification Procedures for Products and Parts

Form Numbers: FAA Forms 8110–12, 8130–1, 8130–6, 8130–9, 8130–12.

Type of Review: Renewal of an information collection.

Background: 14 CFR part 21 prescribes certification standards for aircraft, aircraft engines, propellers appliances and parts. The information collected is used to determine compliance and applicant eligibility. FAA Airworthiness inspectors, designated inspectors, engineers, and designated engineers review the required data submittals to determine that aviation products and articles and their manufacturing facilities comply with the applicable requirements, and that the products and articles have no unsafe features.

Respondents: Approximately 13,339 aircraft parts designers, manufacturers, and aircraft owners.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 30 minutes.

Estimated Total Annual Burden: 19,487 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 22, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–01710 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Air Traffic Slots Management

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for an existing information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 31, 2012, vol. 77, no. 170, page 53249. The FAA collects information to allocate slots and maintain accurate record of slot transfers at slot-controlled airports. The information is provided by air carriers and other operators at slot controlled airports.

DATES: Written comments should be submitted by February 27, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–XXXX.

Title: Air Traffic Slots Management.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: New clearance of an existing information collection.

Background: The FAA has implemented several initiatives to address congestion and delay issues within the National Airspace System. The FAA has issued orders limiting operations at John F. Kennedy International Airport (JFK), Newark Liberty International Airport (EWR), and LaGuardia Airport (LGA). The FAA also has designated O'Hare International Airport (ORD) and San Francisco International Airport (SFO) as Level 2 airports under the International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG).

These orders resulted in part from increasing congestion and delays at the airports requiring the FAA to allocate arrival and departure slots at JFK, EWR, and LGA. The designations resulted in part from increasing congestion and delays at the airports requiring FAA to implement a voluntary process to manage operational growth at ORD and SFO.

The information is reported to the FAA by carriers holding a slot at JFK, EWR, or LGA; by carriers operating at ORD or SFO; or by operators conducting unscheduled operations at LGA. At JFK and EWR, carriers must notify the FAA of: (1) Requests for confirmation of transferred slots; (2) requests for seasonal allocation of historic and additional available slots; and (3) usage of slots on a seasonal basis. At LGA, carriers must notify the FAA of: (1) Requests for confirmation of transferred slots; (2) slots required to be returned or slots voluntarily returned; (3) requests to be included in a lottery for available slots; and (4) usage of slots on a bi-monthly basis. At LGA, unscheduled operators must request and obtain a reservation from the FAA prior to conducting an operation. At ORD and SFO, carriers must notify the FAA of their intended operating schedules on a seasonal basis. The FAA estimates that all information from carriers is submitted electronically from information stored in carrier scheduling databases, and that nearly all requests for unscheduled operation reservations are submitted electronically through either an Internet or touch-tone system interface.

Respondents: Approximately 500 carriers and other operators.

Frequency: Information is collected as needed; some reporting on bimonthly or semiannual basis.

Estimated Average Burden per Response: 2 minutes per unscheduled operation reservation; 6 minutes per notice of slot transfer; 2 hours per schedule submission or slot request; and 2 hours per slot usage report.

Estimated Total Annual Burden: 7,031.5 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 17, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–01717 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Airport Noise Compatibility Planning

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The respondents are those airport operators voluntarily submitting noise exposure maps and noise compatibility programs to the FAA for review and approval.

DATES: Written comments should be submitted by March 29, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0517.

Title: Airport Noise Compatibility Planning.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The voluntarily submitted information from the current CFR Part 150 collection, e.g., airport noise exposure maps and airport noise compatibility programs, or their revisions, is used by the FAA to conduct reviews of the submissions to determine if an airport sponsor's noise compatibility program is eligible for Federal grant funds. If airport operators did not voluntarily submit noise exposure maps and noise compatibility programs for FAA review and approval, the airport operator would not be eligible for the set aside of discretionary grant funds.

Respondents: Approximately 15 airport operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3882.6 hours.

Estimated Total Annual Burden: 56,160 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 22, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–01705 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Flight Operational Quality Assurance (FOQA) Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 2, 2012, vol. 77, no. 191, pages 60165–60166. The FAA requires certificate holders who voluntarily establish approved Flight Operational Quality Assurance (FOQA) programs to periodically provide aggregate trend analysis information from such programs to the FAA.

DATES: Written comments should be submitted by February 27, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0660.

Title: Flight Operational Quality Assurance (FOQA) Program.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The purpose of collecting, analyzing, aggregating, and reporting this information is to identify potential threats to safety, and to enable early corrective action before such threats lead to accidents. Title 14, Code of Federal Regulations (14 CFR), Subpart 13.401, stipulates that the FAA does not use FOQA information in punitive enforcement action against an air carrier or its employees, when that air carrier has an FAA approved FOQA program. There are no legal or administrative requirements that necessitate this rule. The rule is intended to encourage the voluntary implementation of FOQA programs in the interest of safety enhancement.

Respondents: 60 airline operators.

Frequency: Information is collected monthly.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 720 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 22, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–01716 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Operations Specifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The FAA assesses the information collected and issues operations specifications to foreign air carriers. These operations specifications assure the foreign air carrier's ability to navigate and communicate safely within the U.S. National Airspace System.

DATES: Written comments should be submitted by March 29, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0749

Title: Operations Specifications.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: This rule clarifies and standardizes the rules for applications by foreign air carriers and foreign persons for operations specifications issued under 14 CFR part 129 and establishes new standards for amendment, suspension and termination of those operations specifications. This final rule also applies to foreign air carriers and foreign persons operating U.S.-registered aircraft in common carriage solely outside the United States. This action was necessary to update the process for issuing operations specifications, and it establishes a regulatory basis for current practices, such as amending, terminating, and suspending operations specifications.

Respondents: Approximately 25 new applicants for operations specifications annually

Frequency: Five FSDOs will receive approximately five applications per year.

Estimated Average Burden per Response: 3 hours.

Estimated Total Annual Burden: 75 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 22, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–01704 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Application for Employment With the Federal Aviation Administration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 2, 2012, vol. 77, no. 191, pages 60166–60167. The information collected will be used to evaluate the qualifications of applicants for a variety of positions within the FAA.

DATES: Written comments should be submitted by February 27, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0597.

Title: Application for Employment with the Federal Aviation Administration.

Form Numbers: Information is collected via the Office of Personnel Management online USAJOBS system and the FAA's Automated Vacancy Information Access Tool for Online Referral staffing tool.

Type of Review: Renewal of an information collection.

Background: Under the provisions of Public Law 104–50, the Federal Aviation Administration (FAA) was given the authority and the responsibility for developing and implementing its own personnel system. The agency requests certain information needed to determine basic eligibility for employment and potential eligibility for veteran's preference and Veteran's Readjustment Act appointments. In addition, occupation specific questions assist us in determining candidates' qualifications so that we may hire only the best-qualified candidates for our many aviation safety-related occupations.

Respondents: Approximately 118,000 applicants annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1.5 hours.

Estimated Total Annual Burden: 177,000 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 22, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–01712 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Critical Parts for Airplane Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The Federal Aviation Administration (FAA) is amending the airworthiness standards for airplane propellers. This action will define what a propeller critical part is, require the identification of propeller critical parts by the manufacturer, and establish engineering, manufacture, and maintenance processes for those parts. These processes will be required to be recorded and maintained within company manuals.

DATES: Written comments should be submitted by March 29, 2013.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–XXXX.

Title: Critical Parts for Airplane Propellers.

Form Numbers: There are no forms associated with this information collection activity.

Type of Review: Clearance of a new information collection.

Background: On December 1, 2011, FAA published a notice of proposed rulemaking titled ''Critical Parts for Airplane Propellers'' (76 FR 74749). This activity contains new Paperwork Reduction Act recordkeeping requirements that were not addressed in that notice of proposed rulemaking, and which are addressed here. The rule will require that U.S. companies who manufacture critical parts for airplane propellers update their manuals to record engineering, manufacture, and maintenance processes for propeller critical parts. There are currently three U.S. companies who will be required to revise their manuals to include these processes.

Respondents: Three manufacturers.

Frequency: This is a one time requirement.

Estimated Average Burden per Response: 40 hours.

Estimated Total Annual Burden: 120 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency

will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 22, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–01668 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reduction of Fuel Tank Flammability on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The FAA's Fuel Tank Flammability rule requires manufacturers to report to the FAA every six months for up to 5 years after the flammability reduction system is incorporated into the fleet. The data is needed to assure system performance meets that predicted at the time of certification.

DATES: Written comments should be submitted by March 29, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0710.

Title: Reduction of Fuel Tank Flammability on Transport Category Airplanes.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Design approval holders use flammability analysis documentation to demonstrate to their FAA Oversight Office that they are compliant with the Fuel Tank Flammability Safety rule (73 FR 42443). Semi-annual reports submitted by design approval holders provide listings of component failures discovered during scheduled or unscheduled maintenance so that the reliability of the flammability reduction means can be verified by the FAA.

Respondents: Approximately 5 design approval holders.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 4,000 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 22, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–01709 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Meeting: RTCA Next Gen Advisory Committee (NAC)

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

ACTION: Notice of RTCA NextGen Advisory Committee (NAC).

SUMMARY: The FAA is issuing this notice to advise the public of the eighth meeting of the RTCA NextGen Advisory Committee (NAC).

DATES: The meeting will be held February 7, 2013, from 9:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held in the ballroom of the Hotel Monaco, 15 West 200 South, Salt Lake City, UT 84101.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, by telephone at (202) 833–9339, fax at (202) 833–9434, or the Web site at *http://www.rtca.org.* Alternately, contact Andy Cebula at (202) 330–0652, or email *acebula@rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a NextGen Advisory Committee meeting. The agenda will include the following:

February 7, 2013

- Opening of Meeting and Introduction of NAC Members—Chairman Bill Ayer, Chairman, Alaska Air Group
- Official Statement of Designated Federal Official—The Honorable Michael Huerta, FAA Administrator
- Review and approval of October 4, 2012 Meeting Summary and Revision to NAC Terms of Reference
- Chairman's Report—Chairman Ayer
- FAA Report—Mr. Huerta
- Review and Approve Recommendation for Submission to FAA
  - NextGen Implementation Metrics—a recommendation for Key city pairs evaluation of Transcon/Regional City Pairs that can be used for NextGen metrics.
- Data sources for measuring NextGen fuel Impact
  - Update of initiative to identify and obtain critical data sources to track and analyze the impacts of NextGen.
- Cat Ex 2 Task Group
  - Preliminary report on the recommendation for implementing new statutory authority for a streamlined environmental review process.
- Performance Based Navigation (PBN)
  - Preliminary report to identify and mitigate barriers to implementing PBN.
- Issues associated with Implementing RNAV/RNP
  - An open discussion by the Committee of Non-technical barriers of PBN procedures.
- Anticipated Issues for NAC consideration and action at the next meeting, May 30, 2013
- Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION**

CONTACT section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 9, 2013.

David Sicard,

Manager, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–01818 Filed 1–24–13; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Plan of Integrated Airport Systems: Clarification of Wildlife Hazard Management Requirements for Non-Certificated Federally Obligated Airports

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

ACTION: Notice; extension of comment period.

SUMMARY: This action extends the comment period for a Notice that was published on December 10, 2012. Nothing has changed from the original document published on December 10, 2012. In that document, the FAA proposed to clarify Grant Assurance No. 19, ''Operation and Maintenance,'' which is required of an airport sponsor as a condition of receiving a development grant under the Airport Improvement Program (AIP). This clarification would require non-certificated, federally obligated airports that, after the effective date of this **Federal Register** Notice, accept a new airport development grant funded under the Airport Improvement Program (AIP), or accept a transfer of land under the Surplus Property Act for airport purposes (''Subject Airports''), to conduct Wildlife Hazard Site Visits (WHSVs) or Wildlife Hazard Assessments (WHAs). Non-certificated airports are airports that do not have a Part 139 certificate, and may include both commercial service airports as well as non-primary airports that serve mostly general aviation traffic. The Secretary of Transportation is required to provide notice and comment in the **Federal Register** and an opportunity for the public to comment upon proposals to modify the assurances or add new assurances. The FAA has elected to extend the comment period closing date to allow respondents additional time to adequately analyze the Notice and prepare comments.

DATES: The comment period for the notice that published on December 10, 2012 (77 FR 73511) is extended. Send your comments on or before January 31, 2013. The FAA will consider comments received on the proposed interpretation of the existing grant assurances. The FAA may adopt revisions resulting from comments as of the date of a subsequent Notice in the **Federal Register**.

ADDRESSES: You may send comments [identified by Docket Number FAA–2012–29591] using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide.

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 West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael J. O'Donnell, Director, Office Airport Safety and Standards, Room 621, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–3053, email: *mike.o'donnell@faa.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to clarify the FAA's interpretation of 49 U.S.C. 47107(a)(19) and the corollary Grant Assurance No. 19, relating to airport operations and maintenance. The FAA proposes to require sponsors of federally obligated, non-certificated airports that, after the effective date of this **Federal Register** Notice, accept a new airport development grant funded under the Airport Improvement Program, or accept a transfer of land under the Surplus Property Act for airport purposes to identify and mitigate wildlife hazards at their airports. These actions will take the form of initial Wildlife Hazard Site Visits (WHSVs) or Wildlife Hazard Assessments (WHAs), depending on the size of the airport, potentially followed by more detailed Wildlife Hazard Management Plans (WHMPs).

The purpose of a WHSV is for the sponsor to identify any immediate hazards and for the FAA to determine whether a more comprehensive WHA is necessary. A WHSV is typically conducted over a period of one to three days. A WHA is a far more comprehensive survey, typically conducted over a 12-month period. WHMP is the plan the airport proposes to mitigate any wildlife hazards found.

The Secretary must receive certain assurances from a sponsor (applicant) seeking financial assistance under title 49 U.S.C. 47107, as amended. Sponsors must submit and attest to these assurances as part of their application for Federal financial assistance, and the FAA incorporates these assurances into all AIP grant agreements. From time to time, as necessary, the FAA clarifies, modifies or supplements these assurances to reflect new requirements deemed reasonably necessary to carry out the Airport Improvement Program. A complete list of the current grant assurances is available at: *http://www.faa.gov/airports/aip/grant_assurances/*. The FAA amended and published the current assurances in the **Federal Register** on April 13, 2012 (see ''*Airport Improvement Program (AIP) Grant Assurances,*'' 77 FR 22376). The FAA uses a standard set of assurances for Airport Sponsors (owners/operators) called Appendix 1. The FAA is interpreting 49 U.S.C. 47107(a)(19) and the corollary grant assurance, No. 19, relating to airport operation and maintenance, to require airport sponsors to conduct wildlife hazard assessments or site visits and other actions as necessary, as detailed in this notice, to detect and identify wildlife hazards. The clarification relates to Appendix 1, Airport Sponsors assurances.

Grant Assurance No. 19, ''Operation and Maintenance,'' requires a sponsor to operate ''the airport and all facilities which are necessary to serve the aeronautical users of the airport [* * *], in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation.'' Under Assurance No. 19, sponsors are also required to ''have in effect arrangements for [* * *] promptly notifying airmen of any condition affecting aeronautical use of the airport.''

The airports affected by this clarification of Grant Assurance No. 19

(Subject Airports) are non-certificated airports. Non-certificated airports include smaller commercial service airports, as well as non-primary airports that service mostly general aviation (GA) operations. These airports are typically smaller and have less air traffic, more piston-powered aircraft, and smaller jet aircraft, than certificated airports. This notice does not apply to Part 139 certificated airports. All Part 139 certificated airports will continue to follow Part 139 regulations for determining when WHA's are required.

The FAA has divided the Subject Airports into four categories based on based aircraft and total operations. The four categories are:

a. Subject Airports with 100 or more based turbine-powered aircraft or 75,000 or more total annual operations. The WHA must be initiated within three years of receiving a development grant after the final **Federal Register** notice. The airport sponsor must update its WHA at least once every 10 years thereafter.

b. Subject Airports with between 20–99 based turbine-powered aircraft or 30,000–74,999 total annual operations. The WHSV must be initiated within three years of receiving a development grant after the final **Federal Register** notice. The airport sponsor must update its WHSV at least once every five years thereafter.

c. Subject Airports with between 0–19 based turbine-powered aircraft or between 10,000–29,999 total annual operations. The WHSV must be initiated within five years of receiving a development grant after the final **Federal Register** notice. The airport sponsor must update its WHSV at least once every five years thereafter.

d. Subject Airports with no based turbine-powered aircraft and fewer than 10,000 total annual operations. The WHSV must be initiated within eight years of receiving a development grant after the final **Federal Register** notice. The airport sponsor must update its WHSV at least once every five years thereafter.

Data for these categories comes from the FAA Form 5010–1, Airport Master Record database. The FAA classifies airports to fit within the highest applicable category: That is, if an airport's number of based turbine-powered aircraft would place it into one category, while the airport's number of annual operations would place it into a higher category, the FAA classifies the airport to be within the higher category.

When a WHSV is completed, the airport sponsor will provide a letter to the FAA along with the WHSV report. This letter will summarize pertinent wildlife information, any immediate mitigation activities the airport can do to alleviate or reduce wildlife hazards, and a recommendation as to whether a more comprehensive WHA is necessary. The FAA will then determine the need for a comprehensive WHA. Similarly, the FAA will determine if the conclusions and recommendations within a WHA warrant a WHMP.

The FAA further interprets the statutory and grant assurance obligations to require airport sponsors to update their WHAs every 10 years, and WHSVs at least once every five years thereafter. WHAs are granted a longer time before expiration because they cover a full year and are more comprehensive than WHSVs. WHSVs are one to three days in length, and are not nearly as comprehensive as WHAs. Like other WHAs, sponsors must submit the updated WHAs to the FAA Administrator for approval and determination of the need for a WHMP.

The clarification the FAA proposes represents the FAA's desire to continue to enhance safety and prevent accidents before they occur, and is consistent with its previous safety enhancement efforts. These efforts include rulemaking on the subject of Safety Management Systems (SMS), as well as Cert Alert No. 09–10 ''Wildlife Hazard Assessments in Accordance with Part 139 Requirements'' (June 11, 2009), which the FAA issued to remind Part 139 airport operators of their obligations to conduct Wildlife Hazard Assessments if certain criteria are met. In this Cert Alert, the FAA also recommended that Part 139 airports that had not experienced a triggering event voluntarily conduct a WHA. In addition, the Cert Alert recommended that airports update WHAs more than five years old. The FAA believes sponsors who accept new grants at Subject Airports need to be more proactive in the future and take steps to understand and alleviate the risks of wildlife strikes.

The FAA published Advisory Circular 5200–33B (''Hazardous Wildlife Attractants on or Near Airports'') on August 28, 2007. Paragraph 2 states, ''Airports that have received Federal grant-in-aid assistance must use these standards.'' The word ''standards'' in this section of the AC refers to the separation criteria for proposed land use practices, described in Section 1 of the AC and referenced in Section 4–3 of the AC. The FAA considers the grant assurances to require federally funded airports to adhere to the separation criteria.

The AC also recommends that federally funded airports near woodlands, wetlands, and water prepare wildlife hazard assessments (WHAs). Specifically, Paragraph 2–7(c) states, ''The FAA recommends that operators of airports surrounded by woodlands, water, or wetlands refer to Section 2.4 of this AC.'' The FAA has not interpreted this statement or the grant assurances to mean that non-certificated airports were required to do WHAs. This interpretation of the AC was reasonable based on the AC's plain language, its history, as well as the requirements for federally funded airports under Part 139, which were less stringent with regard to WHA triggering events.

The FAA is concurrently publishing the draft Advisory Circular, No. 5200–33C, on the FAA's Web site at *http://www.faa.gov/airports/resources/draft_advisory_circulars/* for public comment. To comment on the draft Advisory Circular, follow the instructions on the Web site.

Proposed changes to Advisory Circular 5200–33B include the removal of Section 2.7(c), ''*Airports Surrounded by Wildlife Habitat.*'' The FAA also proposes to modify the Applicability section to be consistent with the FAA's interpretation of Grant Assurance No. 19. The FAA proposes interpreting the grant assurance to require non-certificated, federally obligated airports that accept a new airport development grant under the Airport Improvement Program (AIP), or a new surplus property conveyance, to monitor, evaluate, and mitigate risks associated with wildlife hazards. The FAA also proposes recommended procedures concerning off-airport attractants (i.e., notification and review of proposed land-use practice changes in the vicinity of public-use airports).

We are also clarifying in this **Federal Register** Notice that we interpret the phrase ''farthest edge of the airport's AOA'' in Para 1–4 of Advisory Circular 150/5200–33 (''Hazardous Wildlife Attractants on or Near Airports'') to refer to the edge of the air operations area (AOA) closest to the wildlife attractant.

This serves as notice pursuant to 49 U.S.C. 47107(h) that the FAA interprets Grant Assurance No. 19 to include a requirement for all Subject Airports to undertake either a Wildlife Hazard Assessment (WHA) or Wildlife Hazard Safety Site Visit (WHSV), and to mitigate wildlife risks according to criteria set forth in this notice. This is done in accordance with the authority of the Secretary of Transportation to take such action that the Secretary considers necessary to carry out the Airport Improvement Program, including grant assurance requirements

for sponsors. 49 U.S.C. 47107(g)(1)(A), 47122(a). To comment on this Notice, follow the instructions set forth under **''ADDRESSES,''** above.

Currently, Grant Assurance No. 19 reads, in part, ''[The sponsor] will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions.'' To clarify, the FAA proposes to add language addressing wildlife hazards to this sentence, so that it would read: ''[The sponsor] will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to issues including, but not limited to, climatic and flood conditions, and wildlife hazards.''

This **Federal Register** Notice does not apply to Part 139 certificated airports. Specific requirements for certificated airports to alleviate wildlife hazards whenever detected are published at 14 CFR 139.337.

Under the Surplus Property Act of 1944, now codified at 49 U.S.C. 47151–47153, Congress authorized the conversion of surplus military airports to civilian public use airports. State or local governments request the Federal Government to convey land that is desirable for developing, improving, operating, or maintaining a public airport. The property is transferred to the new public-entity owner through an instrument of property conveyance. The transfer instrument contains deed covenants similar to the grant assurances, which the FAA enforces through 14 CFR Part 16. One of the deed covenants is a provision substantially similar to Grant Assurance No. 19 (See FAA Order 5150.2A, Appendix 3, paragraph 6(b)). This is to provide notice that the FAA will be interpreting this parallel provision of Grant Assurance No. 19 in a similar manner.

In summary, the FAA proposes to interpret the statutory and grant assurance provisions relating to safety, and the parallel deed covenant included in instruments of conveyance of surplus property, on a prospective basis, to require all Subject Airports to conduct either a WHA or WHSV, and to prepare a WHMP if necessary, upon acceptance of a new grant for a development project, or a new instrument of conveyance for surplus property after the effective date of the final **Federal Register** Notice. The FAA believes this will enhance safety in managing wildlife hazards at general aviation airports.

Additional Information: On March 4, 2008, a catastrophic wildlife strike involving a Cessna 500 Citation and an unknown number of migratory white pelicans resulted in five fatalities near Wiley Post Airport in Oklahoma City, OK. Following the National Transportation Safety Board (NTSB) investigation, the NTSB recommended the FAA ''[v]erify that all federally obligated general aviation airports that are located near woodlands, water, wetlands, or other wildlife attractants are complying with the requirements to perform wildlife hazard assessments as specified in Federal Aviation Administration Advisory Circular 150/5200–33B, Hazardous Wildlife Attractants On or Near Airports.'' In response, the FAA stated it would:

> ''[* * *] modify Advisory Circular (AC) 150/5200–33B and our grant assurances to clarify the responsibility of federally obligated National Plan of Integrated Airport System/General Aviation (NPIAS/GA) airports, to conduct wildlife hazard assessments (WHA). To assist the airports in conducting the WHAs, we will make Airport Improvement Program (AIP) grant funds available to them and we will prepare a plan to establish the priority and subsequent schedule for completing the WHAs * * *.''

Many populations of wildlife species commonly involved in aircraft strikes in the United States have increased markedly in number in the last few decades. For example, from 1980 to 2009, the resident (non-migratory) Canada goose population in the USA and Canada increased at a mean rate of 13.3 percent per year. Other species showing significant mean annual rates of increase included bald eagles (3.6 percent), wild turkeys (11.1 percent), turkey vultures (2.6 percent), American white pelicans (8.4 percent), double-crested cormorants (6.6 percent), and sandhill cranes (6.4 percent). Thirteen of the 14 bird species in North America with mean body masses greater than 8 lbs. have shown significant population increases over the past three decades. The white-tailed deer population increased from about 15 million in 1984 and to over 28 million in 2010.

In May 2009, the FAA authorized a study through the FAA Airport Technology Research and Development Branch to review the National Wildlife Strike Database and determine the current level of reporting and if it is sufficient to determine national trends. The two parts of this study, ''*Trends in Wildlife Strike Reporting, Part 1—Voluntary System 1990–2008,*'' DOT/FAA/AR–09/65 (December 2009) and ''*Wildlife Strike Reporting—Sources of Data in Voluntary System,*'' DOT/FAA/AR–09/63 (December 2009), also reviewed whether strike reporting should be mandated and how the FAA can increase its data collection.

This study identified an increase in the total number of strikes reported from 20 percent of all strikes occurring from 1990 to 1994 to 39 percent of all strikes occurring from 2004 to 2008 at airports certificated under 14 Code of Federal Regulations (CFR) Part 139. Although there was a higher level of reporting, the total number of damaging strikes did not increase. The study attributes this to the successful implementation of professionally run wildlife hazard programs to mitigate significant wildlife hazards at many certificated airports (See *Trends in Wildlife Strike Reporting*, section 6).

The study did identify substantial reporting gaps in the reporting of bird strikes among certificated airports, air carriers, and GA airports. The report addressed GA airports listed in the NPIAS (and therefore eligible to receive grants of federal funding) separately from other GA airports. Less than 6 percent of all strike reports come from NPIAS GA airports, and reporting rates average less than 1/20 of the rates at Part 139 airports.

Although the current overall reporting rate of 39 percent is adequate to: (1) Track national trends in wildlife strikes; (2) determine the hazard level of wildlife species that are being struck; and (3) provide a scientific foundation for FAA policies and guidance regarding the mitigation of risk from wildlife strikes, the study concluded that NPIAS GA airport strike reporting is underrepresented (see ''*Trends in Wildlife Strike Reporting,*'' section 5.2).[1] Whereas about 11 percent of the strikes reported from Part 139 airports indicated damage to the aircraft, about 50 percent of the strikes reported from NPIAS GA airports indicated damage. Thus, even though NPIAS GA airports report fewer total damaging strikes compared to Part 139 airports, such strikes constitute a much higher percentage of their total reporting. This raises the concern that non-damaging strikes are occurring at these airports but going unreported.

Increased monitoring of general conditions and reporting of even non-damaging strikes by GA airports is important because it allows for identification of potential and minor hazards before they become major hazards, which in turn allows airports to prevent damaging strikes before they occur.

Turning to strike rates for GA aircraft at Part 139 compared to NPIAS GA airports, the reported strike rate for GA

[1] This underreporting may be partly due requirement in part 139 that Class I–III airports conduct a wildlife hazard assessment and then implement a wildlife hazard management plan should one of four specified triggering events occur at the airport.

aircraft at Part 139 airports was nine times higher than the reported strike rate for GA aircraft at NPIAS GA airports. ''GA aircraft'' is defined in the study as non-commercial private, business, or government aircraft—see ''*Trends in Wildlife Strike Reporting,*'' section 4.3.3. However, the damaging strike rate for GA aircraft at Part 139 airports was three times higher than it was for GA aircraft at NPIAS GA airports. It is notable that of the 49 reported civil aircraft destroyed or damaged beyond repair because of wildlife strikes in the U.S. from 1990–2008, 33 (67 percent) occurred on or near GA airports.

According to the study, the number of Part 139 airports reporting at least one wildlife strike increased from 234 (42 percent of the 552 airports) in 1990 to 333 (60 percent) in 2008. The overall reported strike rates at individual Part 139 airports were 15 to 47 times higher compared to NPIAS non-certificated airports in each year (1990–2009). The average strike rate of all Part 139 airports compared to NPIAS non-certificated airports was 23 times higher during this same time. Although this may be explained by a different mix of aircraft using these two different categories of airports, the magnitude of the difference indicates that actual reporting rates for NPIAS GA airports are much lower than for Part 139 airports. This is supported in the study by an examination of reporting rates for damaging strikes where the magnitude of difference is much less. Whereas Part 139 airports had a 23-fold higher average reporting rate for all strikes compared to NPIAS GA airports, the reporting rate for damaging strikes was only 5-fold higher. Thus, even though fewer total damaging strikes are reported compared to Part 139 airports, there is more of a tendency at NPIAS GA airports to report damaging strikes compared to non-damaging strikes. As stated above, increased monitoring of wildlife conditions and reporting of even non-damaging strikes are important to prevent dangerous conditions and damaging strikes before they occur.

Issued in Washington, DC, on January 10, 2013.

Elliott Black,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 2013–00778 Filed 1–24–13; 4:15 pm]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Waiver of Aeronautical Land-Use Assurance: Outagamie County Regional Airport (ATW), Appleton, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal from Outagamie County Regional Airport (Sponsor), Appleton, WI, to release a 77.5-acre parcel of land from the federal obligation dedicating it to aeronautical use and to authorize this parcel to be used for revenue-producing, nonaeronautical purposes.

DATES: Comments must be received on or before February 27, 2013.

ADDRESSES: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4635; FAX Number (612) 253–4611; email address *Daniel.J.Millenacker @FAA.GOV.* Documents reflecting this FAA action may be reviewed at the following locations: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706; or Office of Airport Director, Outagamie County Regional Airport, W6390 Challenger Drive, Suite 201, Appleton, WI 54914.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4635; FAX Number (612) 253–4611; email address *Daniel.J.Millenacker@FAA.GOV.*

SUPPLEMENTARY INFORMATION: The parcel of land is located along the southern boundary of Outagamie County Regional Airport. The parcel will be used for construction and operation of a Public Safety Training Center (PSTC) by the Fox Valley Technical College (FVTC). The PSTC is an educational campus intended to provide degree/diploma/certificate programs to students enrolled in public safety disciplines including fire protection, law enforcement, and emergency medical services.

No airport landside or airside facilities are presently located on this parcel nor is airport development contemplated in the future. Development of the parcel for airside or landside operations is largely restricted due to significant grade differences which exist on the land surface. Current use of the surface of the parcel is for agricultural purposes. The parcel presently serves the primary purpose of protecting airport aeronautical (imaginary) surfaces. The parcel will continue to serve in this same capacity with a proposed change to nonaeronautical, revenue-producing use from its present aeronautical use designation.

The parcel is depicted on the Airport Layout Plan (ALP) dated January 13, 1993, and the Exhibit ''A'' property map. This parcel, as shown on the ALP, is not needed for aeronautical use. There are no impacts to the airport by allowing it to waive the requirement to maintain the parcel as aeronautical use.

Of the 77.5 acres, approximately 74.5 acres were originally purchased with sponsor funds. The remaining acres were acquired under a larger land acquisition grant, Airport Improvement Program (AIP) Grant No. 3–55–0002–30–06.

A fair market value (FMV) appraisal for the parcel was completed in 2011 in accordance with FAA Order 5100.37A. The appraisal concluded that the FMV for acquisition of the parcel was $1,369,000. A standard capitalization rate was applied to the FMV to establish a base annual rent to be paid by FVTC for use of the parcel. A lease agreement established by the airport sponsor defines leasehold terms and conditions. The airport sponsor understands that rent and all other revenue that it collects in connection with the PSTC campus will be considered airport revenue and used in accordance with 49 U.S.C. Sections 47107 and 47133; FAA's Policy and Procedures on the Use of Airport Revenue; and FAA Order 51960.6B titled, ''Airport Compliance Manual.'' The annual income from rent payment will generate a long-term, revenue-producing stream that will further the Sponsor's obligation under FAA Grant Assurance No. 24 to make the airport as financially self-sufficient as possible.

The sponsor will control FVTC's use of the parcel through the terms and conditions of the ground lease. The lease will be subordinate to the sponsor's existing grant assurances. This will ensure that all activities contemplated on the parcel will be compatible with FAA requirements and airport operations.

An environmental assessment addressing proposed development of the parcel was prepared. A Federal Finding of No Significant Impact was issued by FAA on Dec. 28, 2012.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

Following is a legal description of the subject airport property at the Outagamie County Regional Airport in Appleton, WI:

A parcel of land being a part of the Southeast Quarter of the Southeast Quarter of Section 35, the Northwest Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter and the Southeast Quarter of the Southwest Quarter of Section 36, T21N, R16E, Town of Greenville, Outagamie County, Wisconsin more fully described as follows:

Commencing at the South Quarter Corner of Section 36; Thence S89°57′00″ W coincident with the South line of the Southwest Quarter of Section 36 a distance of 470.22 feet; Thence N00°51′03″ E a distance of 49.14 feet to the South right-of-way line of CTH BB also being the point of beginning. Thence S89°50′39″ W coincident with said South right-of-way line a distance of 1,098.47 feet; Thence S89°53′16″ W coincident with said South right-of-way line a distance of 1,348.82 feet; Thence N00°08′45″ W a distance of 206.41 feet; Thence N90°00′00″ E a distance of 30.49 feet; Thence N33°46′32″ E a distance of 80.71 feet; Thence N30°09′12″ E a distance of 99.92 feet; Thence N33°41′24″ W a distance of 10.70 feet; Thence S85°14′11″ W a distance of 71.45 feet; Thence S78°41′24″ W a distance of 75.64 feet; Thence N85°54′52″ W a distance of 83.28 feet; Thence N59°02′10″ W a distance of 17.30 feet; Thence N40°48′54″ E a distance of 86.24 feet; Thence N27°48′05″ E a distance of 553.39 feet; Thence N24°30′26″ E a distance of 443.43 feet; Thence N05° 11′40″ E a distance of 163.84 feet; Thence N29°07′17″ E a distance of 322.87 feet; Thence S63°52′35″ E a distance of 1,706.63 feet; Thence N89°51′06″ E a distance of 803.81 feet to the West right-of-way line of Two Mile Road; Thence S00°51′03″ W coincident with said West right-of-way line a distance of 590.25 feet to the North line of Lot 1, Outagamie County CSM No. 1190; Thence S89°57′16″ W coincident with said North line a distance of 420.00 feet to the West line of said Lot 1, Outagamie County CSM No. 1190; Thence S00°51′03″ W coincident with said West line a distance of 420.89 feet to the point of beginning.

Said parcel of land contains 77.5 Acres (3,376,192 Square Feet) more or less.

Subject to all easements and restrictions of record.

Issued in Minneapolis, MN, on December 31, 2012.

Daniel J. Millenacker,

Acting Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2013–01670 Filed 1–23–13; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0176]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on a proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes the collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 29, 2013.

ADDRESSES: You may submit comments (identified by the DOT Docket ID Number above) by any of the following methods:

Electronic Submissions: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Management Facility; M–30, U.S. Department of Transportation, West Building Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Regardless of how you submit your comments, you should mention the docket number of this document. You may call the Docket at (202) 366–9324. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that two copies of the comment be provided.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. 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* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ms. Carla Rush, U.S. Department of Transportation, NHTSA, 1200 New Jersey Avenue SE., W43–417, Washington, DC 20590. (Telephone: (202) 366–4583, Fax: (202) 493–2739).

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before a proposed collection of information is submitted to OMB for approval, Federal agencies must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including 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 compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: Rear Seat Belt Reminder System Survey.

Type of Request: New collection of information.

OMB Control Number: 2127—NEW.

Requested Expiration Date of Approval: Three years from the approval date.

Summary of the Collection of Information: The National Highway Traffic Safety Administration (NHTSA) proposes to collect information from the driving public to determine drivers' and car passengers' seat belt usage habits as well as the effectiveness and consumer acceptance of rear seat belt reminder systems (SBRSs) in order to support an analysis of the potential benefits of requiring a rear SBRS. A national telephone survey will be administered to 2,500 respondents. Given the low incidence of Americans who own a car with a rear SRBS, the respondents will be selected from vehicle registration lists. The sampled population will be then divided up between 2,000 drivers who own cars with a rear SBRS and 500 drivers who own a car without a rear SBRS. The main study will be preceded by a pretest administered to 9 respondents. The survey will collect basic demographic information, seat belt usage habits, acceptability of rear SBRSs, effectiveness of rear SBRSs and perception of current SBRSs. Interview length will average 15 minutes.

A Spanish-language translation and bilingual interviewers would be used to minimize language barriers to participation. No personally identifiable information will be collected during the telephone interviews. In addition, the interviewers would use ''Computer Assisted Telephone Interviewing'' (CATI) to reduce interview length and minimize recording errors.

Description of the Need for the Information and Proposed Use of the Information: NHTSA was established to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

A NHTSA survey released in 2010 found passengers in the rear seat of a vehicle buckle up 74% of the time, compared with 85% for those sitting in the front. Unbelted rear seat passengers risk serious injury or death to themselves and pose a potentially fatal threat to others in the event of a crash. SBRSs have been shown to increase the use of seat belts in the front seats of vehicles. While rear SBRSs are currently available on only a few vehicle models sold in the U.S., NHTSA seeks to collect data from those who drive these vehicles (the test group) and draw comparisons to those who drive similar vehicles without a rear SBRS (the comparison group). To this end, NHTSA will collect basic demographic information from both groups and information on their and their passengers seat belt usage habits, as well as the effectiveness, preferences and acceptance of the rear SBRS.

NHTSA will use the findings from this proposed collection of information in support of an analysis of the potential benefits of requiring a rear SBRS in new vehicles sold in the United States.

Description of the Likely Respondents (including Estimated Number, and Proposed Frequency of Response to the Collection of Information): Under this proposed effort, 9 pretest telephone interviews and 2,500 national survey telephone interviews would be conducted for a total of 2,509 interviews. The telephone interview would be conducted with a national sample of 2,000 drivers aged 18 years old or older, that drive a vehicle with a rear SBRS and regularly transport rear passengers 8 years old or older. In addition to this, interviews would be conducted with a comparison group of 500 drivers aged 18 years old or older that drive similar vehicles as those in the national sample except these vehicle do not have a rear SBRS. These drivers must also regularly transport rear passengers who are 8 years old or older. Interview length will average 15 minutes. The sample will be drawn from registration lists of vehicle owners.

Interviews will be conducted both with respondents using landline phones and cellphones. Federal law prohibits the use of auto dialing to call cell phones; therefore all cell phone numbers would be dialed manually. Each sample member would complete just one interview. Businesses are ineligible for the sample and would not be interviewed.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information: NHTSA estimates that respondents would require an average of 15 minutes to complete the telephone interviews or a total of 627 hours for the 2,509 respondents. All interviewing would occur during a two to three month period during 2013.

Thus the annual reporting burden would be the entire 627 hours. The respondents would not incur any reporting or recordkeeping burden from the data collection.

Authority: 44 U.S.C. 3506(c)(2)(A).

Issued on: January 17, 2013.

Lori K. Summers,

Director, Office of Crashworthiness Standards.

[FR Doc. 2013–01715 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2012–0319]

Pipeline Safety: Annual Reports and Validation

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of extension of submittal deadline for calendar year 2012 gas transmission and gathering annual reports, remind pipeline owners and operators to validate their Operator Identification Number data, and request supplemental reports to correct gas transmission and liquefied natural gas annual report data issues.

SUMMARY: Over the past three years, PHMSA has made a number of amendments to pipeline data regulations and reporting forms for gas, hazardous liquids, and liquefied natural gas (LNG) operators. Most recently, on December 5, 2012, the Office of Management and Budget approved revisions to the gas transmission and gathering annual report. Based on the significant changes to the gas transmission and gathering annual report, PHMSA is extending the filing deadline for calendar year 2012 data from March 15, 2013, to June 15, 2013. In addition, certain operators with Operator Identification Numbers (OPID) established prior to January 1, 2011, are required to validate their OPID data before June 30, 2012. PHMSA has determined that a number of operators have not completed their OPID data validations. Therefore, PHMSA is using this notice to remind operators to validate their OPID data. PHMSA has also noticed that annual reports submitted by gas transmission and LNG operators contain data that conflicts with other required reports submitted to PHMSA. Operators should review their

annual report data to ensure it is accurate and submit supplemental reports to correct errors.

DATES: The filing deadline for calendar year 2012 data for the gas transmission and gathering annual report is extended to June 15, 2013.

FOR FURTHER INFORMATION CONTACT: Blaine Keener, National Field Coordinator, by telephone at 202–366–0970 or by email at *blaine.keener@dot.gov*.

SUPPLEMENTARY INFORMATION:

Submittal Deadline for Calendar Year 2012 Gas Transmission and Gathering Annual Reports

On December 5, 2012, the Office of Management and Budget approved revisions to the gas transmission and gathering annual report (PHMSA F–7100.2–1). Based on the significant changes to the report, PHMSA is extending the filing deadline for calendar year 2012 data from March 15, 2013 to June 15, 2013. Docket PHMSA–2012–0024 includes details about the changes to the report.

PHMSA anticipates enabling the online submittal of gas transmission and gathering annual reports no later than March 1, 2013. When the online reporting system is available, PHMSA will send an email to pipeline operator staff who submitted calendar year 2011 gas transmission and gathering annual reports.

Validation

A final rule published in the **Federal Register** on November 26, 2010, (75 FR 72878) established new regulations (49 CFR §§ 191.22 and 195.64) requiring certain pipeline operators and LNG operators established prior to January 1, 2011, to validate data on file with PHMSA before June 30, 2012. PHMSA extended the compliance deadline for completing validation to September 30, 2012, in Advisory Bulletin ADB–2012–04, published in the **Federal Register** on March 21, 2012, (77 FR 16471). Two types of gas distribution pipeline operators, master meter operators and small LPG operators, are not required to complete validation. All other pipeline operators and LNG operators that received an OPID from PHMSA prior to January 1, 2011 are required to validate their OPID data.

Based on validation data collected through the end of November 2012, approximately sixteen percent of operators with an OPID that were required to validate their data had not complied with this requirement. To avoid enforcement action, these operators should log into the on-line PHMSA Portal at *https://portal.phmsa.dot.gov/phmsaportallanding* and complete their validation. Any operator that has not registered staff in the PHMSA Portal must register by following the instructions at *http://opsweb.phmsa.dot.gov/portal_message/PHMSA_Portal_Registration.pdf* before validation can be completed.

Gas Transmission Annual Reports—Incidents in High Consequence Areas

From calendar year 2004 through 2009 inclusive, PHMSA collected data about incidents in high consequence areas (HCAs) as part of gas integrity management performance reports. Starting with calendar year 2010, this incident data became integrated in the gas transmission and gathering annual report. Gas transmission pipeline operators are also required to submit a gas transmission and gathering incident report for each incident. Since 2004, gas transmission and gathering incident reports have indicated whether the incident occurred in an HCA. ''Incidents occurring in HCA'' data from gas integrity management performance reports, gas transmission annual reports, and incident reports is publicly available on the PHMSA Web site at *http://primis.phmsa.dot.gov/gasimp/pm_summary2.htm*.

For all years except 2009, the numbers from ''Incidents occurring in HCA'' data, included in the integrity management performance reports and annual reports do not match the number from incident reports. While the number of ''Incidents occurring in HCA'' data matches for 2009, the OPIDs detailed in the integrity management performance reports do not match the OPIDs in the incident reports. Gas transmission operators who have reported incidents in HCAs from 2004 through 2011 in either gas integrity management performance reports, gas transmission annual reports, or incident reports should submit supplemental reports as needed to correct the data.

Gas integrity management performance reports can be created or supplemented by sending changes to *blaine.keener@dot.gov*. Gas transmission annual reports and incident reports from 2010 forward can be created or supplemented in the PHMSA Portal at *https://portal.phmsa.dot.gov/phmsaportallanding*. Incident reports from 2004 through 2009 inclusive can be created or supplemented by sending an email to *InformationResourcesManager@dot.gov*.

Liquefied Natural Gas Annual Reports/Incidents and Safety-Related Conditions

Since calendar year 2010, LNG operators have been required to submit annual reports to PHMSA. Part C of the annual report includes data about incidents and Part D includes data about safety-related condition (SRC) reports. LNG operators are also required to submit separate reports to PHMSA for incidents and safety-related conditions.

Based on the LNG data available at the end of November 2012, there are inconsistencies between the data for annual reports, incident reports, and SRC reports. Although there have been no LNG incident reports submitted, LNG annual report data indicates there was one LNG incident in 2010 and another in 2011. PHMSA's SRC report data indicates there were five LNG safety-related conditions reported in 2010 and 2011. However, LNG annual reports indicate 264 safety-related conditions for 2010 and 2011 combined. LNG operators should review their annual reports and SRC reports and submit supplemental reports as needed to correct the data.

LNG annual report data and SRC report data can be downloaded at the following URL: *http://phmsa.dot.gov/pipeline/library/data-stats*.

LNG annual and incident reports can be submitted and supplemented in the PHMSA Portal at *https://portal.phmsa.dot.gov/phmsaportallanding*. SRC reports can be created or supplemented by sending an email to *InformationResourcesManager@dot.gov*.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2013–01619 Filed 1–25–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1107X]

West Michigan Railroad Co.—Abandonment Exemption—in Van Buren County, MI

West Michigan Railroad Co. (WMI) has filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments* to abandon approximately 10.67 miles of rail line between milepost 19.88 (west of the line's crossing of 56th Street near Lawrence, Mich.) and milepost 30.55 (east of Kalamazoo Street in Paw Paw, Mich.), in Van Buren County, Mich. The

line traverses United States Postal Service Zip Codes 49064 and 49079.

WMI has certified that: (1) No local traffic has moved over the line for at least two years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 27, 2013, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 7, 2013. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 19, 2013, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to WMI's representative: William A. Mullins, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

WMI has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by February 1, 2013. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WMI shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WMI's filing of a notice of consummation by January 28, 2014, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 23, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2013–01687 Filed 1–25–13; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 23, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before February 27, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0009.

Type of Review: Revision of a currently approved collection.

Title: Application to Establish and Operate Wine Premises, and Wine Bond.

Form: TTB F 5120.25; 5120.36.

Abstract: TTB F 5120.25, Application to Establish and Operate Wine Premises, is the form used to establish the qualifications of an applicant applying to establish and operate wine premises. The applicant certifies his/her intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use. TTB F 5120.36, Wine Bond, is the form used by the proprietor and a surety company as a contract to ensure the payment of the wine excise tax.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,775.

OMB Number: 1513–0011.

Type of Review: Revision of a currently approved collection.

Title: Formula and/or Process for Article Made With Specially Denatured Spirits.

Form: TTB F 5120.19.

Abstract: TTB F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. TTB uses the information provided on the form to ensure the manufacturing formulas and processes conform to the requirement of 26 U.S.C. 5273.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,194.

OMB Number: 1513–0012.

Type of Review: Extension without change of a currently approved collection.

Title: User's Report of Denatured Spirits.

Form: TTB F 5150.18.

Abstract: The information on TTB F 5150.18 is used to pinpoint unusual activities in the use of specially denatured spirits. The form shows a summary of activities at permit premises. TTB examines and verifies certain entries on these reports to identify unusual activities, errors, and omissions.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,133.

OMB Number: 1513–0014.

Type of Review: Revision of a currently approved collection.

Title: Power of Attorney.

Form: TTB F 5000.8.

Abstract: TTB F 5000.8 delegates the authority to a specific individual to sign documents on behalf of an applicant or principal. Title 26 U.S.C. 6061 authorizes that individuals signing returns, statements, or other documents required to be filed by industry members under the provisions of the IRC or the FAA Act, are to have that authority on file with TTB.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,250.

OMB Number: 1513–0024.

Type of Review: Revision of a currently approved collection.

Title: Report—Export Warehouse Proprietor.

Form: TTB F 5220.4.

Abstract: Proprietors account for taxable articles on this report. TTB uses this information to ensure that Federal laws and regulations have been complied with and to protect against diversion.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,920.

OMB Number: 1513–0029.

Type of Review: Extension without change of a currently approved collection.

Title: Certification of Tax Determination—Wine.

Form: TTB F 5120.20.

Abstract: TTB F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact tax paid.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 500.

OMB Number: 1513–0038.

Type of Review: Revision of a currently approved collection.

Title: Application to Receive Spirits and/or Denatured Spirits by Transfer in Bond.

Form: TTB F 5100.16.

Abstract: TTB F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. TTB uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 228.

OMB Number: 1513–0039.

Type of Review: Extension without change of a currently approved collection.

Title: Distilled Spirits Plants Warehousing Records (TTB REC 5110/02) and Monthly Report of Storage Operations.

Form: TTB 5110.11.

Abstract: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage, and protection of the revenue. It also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel, plus provide for economic analysis.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 5,520.

OMB Number: 1513–0045.

Type of Review: Revision of a currently approved collection.

Title: Distilled Spirits Plants—Excise Taxes (TTB REC 5110/06).

Abstract: This collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,458.

OMB Number: 1513–0046.

Type of Review: Revision of a currently approved collection.

Title: Formula For Distilled Spirits Under The Federal Alcohol Administration Act.

Form: TTB 5110.38.

Abstract: TTB F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by TTB to ensure that a product is made and labeled properly and to audit distilled spirits operations.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 4,000.

OMB Number: 1513–0049.

Type of Review: Revision of a currently approved collection.

Title: Distilled Spirits Plant Denaturation Records (TTB REC 5110/04) and Monthly Report of Processing (Denaturing) Operations.

Form: TTB 5110.43.

Abstract: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,176.

OMB Number: 1513–0056.

Type of Review: Extension without change of a currently approved collection.

Title: Distilled Spirits Plants—Transaction and Supporting Records (TTB REC 5110/5).

Abstract: Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by DSP proprietors to account for spirits and by TTB to verify those accounts and consequent tax liabilities.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 13,516.

OMB Number: 1513–0060.

Type of Review: Revision of a currently approved collection.

Title: Letterhead Applications and Notices Relating to Tax-Free Alcohol (TTB REC 5150/4).

Abstract: Tax-free alcohol is used for non-beverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. Use of tax-free alcohol is regulated to prevent illegal diversion to taxable beverage use. Permits/Applications control authorized uses and flow. TTB REC 5150/4 is designed to protect revenue and public safety.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 1,667.

OMB Number: 1513–0066.

Type of Review: Extension without change of a currently approved collection.

Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices (TTB REC 5170/3).

Abstract: The primary objectives of this recordkeeping requirement are revenue protection, by establishment of accountability data available for audit purposes and consumer protection, by subject record traceability of alcoholic beverages to the retail liquor dealer level of distribution in the event of defective products. This collection of information is contained in 27 CFR 31.234.

Affected Public: Private Sector: Businesses or other for-profits; State, Local, and Tribal Governments.

Estimated Total Burden Hours: 1.

OMB Number: 1513–0067.

Type of Review: Extension without change of a currently approved collection.

Title: Wholesale Dealers Applications, Letterheads, and Notices Relating to Operations. (Variations in Format or Preparation of Records) (TTB REC 5170/6).

Abstract: This information collection is used by permittees who wish to request a variance. We use written applications, letterheads, and notices to rule on proposed variations from standard requirements, to ascertain that revenue is not placed in jeopardy, and to protect the revenue.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 515.

OMB Number: 1513–0080.

Type of Review: Revision of a currently approved collection.

Title: Equipment and Structures (TTB REC 5110/12).

Abstract: Marks, signs, and calibrations are necessary on equipment and structures at a distilled spirits plant. These tools are used for the identification of major equipment and the accurate determination of contents.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1.

OMB Number: 1513–0082.

Type of Review: Extension without change of a currently approved collection.

Title: Alternate Methods or Procedures and Emergency Variations from Requirements for Exports of Liquors (TTB REC 5170/7).

Abstract: TTB allows exporters to request approval of alternate methods from those specified in regulations under 27 CFR Part 28. TTB uses the information to evaluate needs, jeopardy to the revenue, and compliance with the law. TTB also uses the information to identify areas where regulations need changing.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 200.

OMB Number: 1513–0084.

Type of Review: Revision of a currently approved collection.

Title: Labeling of Sulfites in Alcoholic Beverages.

Abstract: In accordance with our consumer protection responsibilities, as mandated by law, TTB requires label disclosure statements on all alcoholic beverage products released from U.S. bottling premises or customs custody that contain 10 parts per million or more of sulfites. The disclosure reduces the consumer's exposure to sulfites, which has been shown to cause an allergic-type reaction in humans.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 12,109.

OMB Number: 1513–0097.

Type of Review: Extension without change of a currently approved collection.

Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax.

Abstract: Excise taxes are collected on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers, or producers. Taxpayers who elect to pay excise taxes by electronic fund transfer must furnish a written notice upon election and discontinuance. Tax revenue will be protected.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1.

OMB Number: 1513–0100.

Type of Review: Extension without change of a currently approved collection.

Title: Applications, Notices, and Relative to Importation and Exportation of Distilled Spirits, Wine, and Beer, Including Puerto Rico and Virgin Islands.

Abstract: Beverage alcohol, industrial alcohol, beer, and wine are taxed when imported. The taxes on these commodities coming from the Virgin Islands and Puerto Rico are largely returned to these insular possessions. Exports are mainly tax-free. These documents ensure that proper taxes are collected and returned according to law.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 180.

OMB Number: 1513–0104.

Type of Review: Extension without change of a currently approved collection.

Title: Information Collected in Support of Small Producer's Wine Tax Credit (TTB REC 5120/11).

Abstract: TTB collects this information to ensure proper tax credit. The information is used by taxpayers in preparing their returns and by TTB to verify tax computation. Recordkeepers are wine producers who want to transfer their credit to warehouse operators and the transferees who take such credit.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,800.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–01679 Filed 1–25–13; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions (CDFI) Fund, an office within the Department of the Treasury, is soliciting comments concerning data collection to support Native American Communities' Access to Capital and Credit Study (the Study). The CDFI Fund administers the Native Initiatives, which focuses on Native CDFIs, and intends to collect data regarding access to credit and capital in Native American, Native Hawaiian, and Alaskan Native communities (collectively referred to as ''Native Communities''). The information collected will be used to identify specific subject matter and data to develop and write the Study.

Data collection and information gathering will be conducted in a manner to minimize burden and facilitate comments and interaction with the Native Communities and other experts. Data collection is expected to take place via online surveys, survey forms submitted electronically to the CDFI Fund, in-person and remote focus groups, tribal consultations, phone questionnaires, or similar methods. This will allow the Native Communities and other experts the opportunity to provide input on the specific topics that will be the root of the Study. The CDFI Fund anticipates publishing the results of these data collections, to the extent permissible by law.

DATES: Written comments should be received on or before March 29, 2013 to be assured of consideration.

ADDRESSES: Direct all comments to Amber Kuchar, Associate Program

Manager, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20005, by email to *cdfihelp@cdfi.treas.gov* or by facsimile to 202–508–0041. Please note that this is not a toll free number.

FOR FURTHER INFORMATION CONTACT: An overview of the Native Initiatives may be found on the CDFI Fund's Web site at *http://www.cdfifund.gov/*. Requests for additional information should be directed to Amber Kuchar, Associate Program Manager, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20005, or call 202–653–0347. Please note that this is not a toll free number.

SUPPLEMENTARY INFORMATION:

Title: Native American Communities' Access to Capital and Credit Study (the Study).

OMB Number: TBD.

Abstract: Pursuant to the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*), the CDFI Fund provides training and technical assistance to CDFIs to enhance their ability to make loans and investments and provide services for the benefit of designated investment areas and targeted populations. Further, the CDFI Fund administers the Native Initiatives, which serve Native Communities. The information collected will be used to identify specific subject matter and data to develop and write the Study. The Study will update the 2001 Native American Lending Study conducted by the CDFI Fund, which resulted in the creation of the Native Initiatives. The requested information is necessary to support effective use of Federal resources.

Current Actions: Request for a new generic Information Collection Requests (ICR) approval.

Type of Review: Regular Review.

Affected Public: Certified CDFIs, entities seeking CDFI certification and similar entities.

Estimated Number of Respondents: 250.

Estimated Annual Time per Respondent: 1–30 hours with an average of 10 hours.

Estimated Total Annual Burden Hours: 2,500 hours.

Requests for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund Web site at *http://www.cdfifund.gov*. Comments on the following subjects are invited: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321; 12 CFR part 1806.

Dated: January 17, 2013.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2013–01652 Filed 1–25–13; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID: OCC–2013–0002]

Minority Depository Institutions Advisory Committee

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

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Office of the Comptroller of the Currency (OCC) announces a meeting of the Minority Depository Institutions Advisory Committee (MDIAC).

DATES: A public meeting of the MDIAC will be held on March 5, 2013, beginning at 8:30 a.m. Eastern Standard Time (EST).

ADDRESSES: The March 5, 2013, meeting of the MDIAC will be held at 400 7th Street SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Beverly Cole, Senior Advisor to the Senior Deputy Comptroller for Midsize and Community Bank Supervision, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: By this notice, the OCC is announcing that the OCC MDIAC will convene a meeting on Tuesday, March 5, 2013, at the OCC's headquarters at 400 7th Street SW., Washington, DC 20219. The OCC will hold a short private session from 8:00 a.m. to 8:30 a.m. EST to cover purely administrative matters. Beginning at 8:30 a.m. EST, the meeting will be open to the public. Agenda items include a discussion of the status of the minority depository institution industry and current topics of interest to the industry. The purpose of the meeting is for the MDIAC to advise the OCC on steps the OCC may be able to make to ensure the continued health and viability of minority depository institutions and other issues of concern to minority depository institutions. Members of the public may submit written statements to the MDIAC by any one of the following methods:

- Email to *MDIAC@occ.treas.gov;* or
- Mail in triplicate to: Beverly Cole, Designated Federal Official, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

The OCC must receive written statements no later than Thursday, February 21, 2013. Members of the public who plan to attend the meeting, and members of the public who require auxiliary aid, should contact the OCC by 5:00 p.m. EST on Thursday, February 21, 2013, to inform the OCC of their desire to attend the meeting and to provide the information that will be required to facilitate entry into the OCC building. Attendees should provide their full name, email address, and organization, if any. Members of the public may contact the OCC via email at *MDIAC@occ.treas.gov* or by telephone at 202–649–5420. On the day of the meeting, attendees will be required to present proof of identification (a driver's license or other government issued photo identification) upon arrival at the OCC in order to gain entrance to the meeting.

Dated: January 22, 2013.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2013–01669 Filed 1–25–13; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Research Advisory

Committee on Gulf War Veterans' Illnesses will conduct a telephone conference call meeting from 12:30 p.m. to 5:15 p.m. on Monday, February 4, 2013, in Room 23 of the Office of Research and Development (ORD), 131 M Street NE., Washington, DC. The toll-free number for the meeting is (800) 767–1750, and the access code is 44644#. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will discuss its annual report to the Secretary, a 2013 Committee report, and updates on VA Gulf War research initiatives. The session will also include discussion of other Committee business and activities.

A 30-minute period will be reserved at 4:45 p.m. for public comments. Individuals who wish to address the Committee are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Roberta White by email at *rwhite@bu.edu.*

Any member of the public seeking additional information should contact Dr. White, Scientific Director, at (617) 638–4620 or Dr. Victor Kalasinsky, Designated Federal Officer, at (202) 443–5682 or by email at *victor.kalasinsky@va.gov.*

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2013–01632 Filed 1–25–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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No. 18 January 28, 2013

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 301

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9610]

RIN 1545–BK68

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) regarding information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities and payments by FFIs to other persons.

DATES: *Effective date.* These regulations are effective January 28, 2013.

Applicability dates. For dates of applicability, see §§ 1.1471–1(c); 1.1471–2(a)(1); 1.1471–2(a)(2)(i), (ii), (iii)(A); 1.1471–2(a)(4)(ii); 1.1471–3(d)(1); 1.1471–3(d)(4)(i), (ii); (iv); 1.1471–3(d)(6)(v); 1.1471–3(d)(11)(viii)(A); 1471–3(d)(12)(iii)(B); 1471–3(e)(3)(ii); 1471–3(e)(4)(vii)(B); 1.1471–4(b)(1), (4); 1.1471–4(d)(7); 1.1471–4(e)(2)(v); 1.1471–4(e)(3)(iv); 1.1471–5(f)(2)(iv); 1.1471–6(i); 1.1472–1(b); 1.1473–1(a)(1)(ii) and 1.1473–1(a)(4)(vi); 1.1474–1(d)(4)(iii)(C) and 1.1474–1(i); 1.1474–2(c); 1.1471–3(c); 1.1474–4(b); 1.1474–5(c); 1.1474–6(f); 1.1474–7(c); 301.1474–1(e).

FOR FURTHER INFORMATION CONTACT: John Sweeney, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. In General

This document contains final amendments to the Income Tax Regulations (CFR parts 1 and 301) under sections 1471 through 1474 of the Code (commonly known as the Foreign Account Tax Compliance Act, or FATCA). On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Public Law 111–147 (the HIRE Act), added chapter 4 of Subtitle A (chapter 4), comprised of sections 1471 through 1474, to the Code. Chapter 4 generally requires U.S. withholding agents to withhold tax on certain payments to foreign financial institutions (FFIs) that do not agree to report certain information to the Internal Revenue Service (IRS) regarding their United States accounts (U.S. accounts), and on certain payments to certain nonfinancial foreign entities (NFFEs) that do not provide information on their substantial United States owners (substantial U.S. owners) to withholding agents. Since the enactment of chapter 4, the Department of the Treasury (Treasury Department) and the IRS have issued preliminary guidance on the implementation of chapter 4. See Notice 2010–60 (2010–37 I.R.B. 329), Notice 2011–34 (2011–19 I.R.B. 765), and Notice 2011–53 (2011–32 I.R.B. 124) (collectively, the FATCA Notices). The FATCA Notices are available at *IRS.gov.*

On February 15, 2012 (77 FR 9022), the Treasury Department and the IRS published a notice of proposed rulemaking (the proposed regulations) addressing chapter 4's due diligence, withholding, reporting, and associated requirements. On October 24, 2012, the Treasury Department and the IRS released Announcement 2012–42, which announced the intention to amend certain provisions of the proposed regulations in adopting the final regulations.

The Treasury Department and the IRS received numerous comments in response to the proposed regulations, and a public hearing on the proposed regulations was held on May 15, 2012. The comments received in writing and at the public hearing were carefully considered in developing these final regulations.

II. Chapter 4 Policy in the Context of the U.S. Federal Income Tax Laws

U.S. taxpayers' investments have become increasingly global in scope. FFIs now provide a significant proportion of the investment opportunities for, and act as intermediaries with respect to the investments of, U.S. taxpayers. Like U.S. financial institutions, FFIs are generally in the best position to identify and report with respect to their U.S. customers. Absent such reporting by FFIs, some U.S. taxpayers may attempt to evade U.S. tax by hiding money in offshore accounts. To prevent this abuse of the U.S. voluntary tax compliance system and address the use of offshore accounts to facilitate tax evasion, it is essential in today's global investment climate that reporting be available with respect to both the onshore and offshore accounts of U.S. taxpayers. This information reporting strengthens the integrity of the U.S. voluntary tax compliance system by placing U.S. taxpayers that have access to international investment opportunities on an equal footing with U.S. taxpayers that do not have such access or otherwise choose to invest within the United States.

To this end, chapter 4 extends the scope of the U.S. information reporting regime to include FFIs that maintain U.S. accounts. Chapter 4 also imposes increased disclosure obligations on certain NFFEs that present a high risk of U.S. tax avoidance. In addition, chapter 4 provides for withholding on FFIs and NFFEs that do not comply with the reporting and other requirements of chapter 4. This withholding generally may be credited against the U.S. income tax liability of the beneficial owner of the payment to which the withholding is attributable, and generally may be refunded to the extent the withholding exceeds such liability. An FFI that does not comply with the requirements of section 1471(b), however, and that beneficially owns the payment from which tax is withheld under chapter 4, may not receive a credit or refund of such tax except to the extent required by a treaty obligation of the United States.

III. Statutory Provisions

The following discussion briefly explains the statutory provisions of FATCA, which are implemented by these regulations. Section 1471(a) requires any withholding agent to withhold 30 percent of any withholdable payment to an FFI that does not meet the requirements of section 1471(b). A withholdable payment is defined in section 1473(1) to mean, subject to certain exceptions: (i) Any payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income (FDAP income), if such payment is from sources within the United States; and (ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

An FFI meets the requirements of section 1471(b) if it either enters into an agreement (an FFI agreement) with the IRS under section 1471(b)(1) to perform certain obligations or meets requirements prescribed by the Treasury Department and the IRS to be deemed to comply with the requirements of section 1471(b). An FFI is defined as

any financial institution that is a foreign entity, other than a financial institution organized under the laws of a possession of the United States (generally referred to as a U.S. territory in this preamble). For this purpose, section 1471(d)(5) defines a financial institution as, except to the extent provided by the Secretary, any entity that: (i) Accepts deposits in the ordinary course of a banking or similar business; (ii) as a substantial portion of its business, holds financial assets for the account of others; or (iii) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities.

Section 1471(b)(1)(A) and (B) requires an FFI that enters into an FFI agreement (a participating FFI) to identify its U.S. accounts and comply with verification and due diligence procedures prescribed by the Secretary. A U.S. account is defined under section 1471(d)(1) as any financial account held by one or more specified United States persons, as defined in section 1473(3), (specified U.S. persons) or United States owned foreign entities (U.S. owned foreign entities), subject to certain exceptions. Section 1471(d)(2) defines a financial account to mean, except as otherwise provided by the Secretary, any depository account, any custodial account, and any equity or debt interest in an FFI, other than interests that are regularly traded on an established securities market. A U.S. owned foreign entity is defined in section 1471(d)(3) as any foreign entity that has one or more substantial U.S. owners (as defined in section 1473(2)).

A participating FFI is required under section 1471(b)(1)(C) and (E) to report certain information on an annual basis to the IRS with respect to each U.S. account and to comply with requests for additional information by the Secretary with respect to any U.S. account. The information that must be reported with respect to each U.S. account includes: (i) The name, address, and taxpayer identifying number (TIN) of each account holder who is a specified U.S. person (or, in the case of an account holder that is a U.S. owned foreign entity, the name, address, and TIN of each specified U.S. person that is a substantial U.S. owner of such entity); (ii) the account number; (iii) the account balance or value; and (iv) except to the extent provided by the Secretary, the gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide). In lieu of reporting account balance or value and reporting gross receipts and gross withdrawals or payments, a participating FFI may, subject to conditions provided by the Secretary, elect under section 1471(c)(2) to report the information required under sections 6041, 6042, 6045, and 6049 as if such institution were a U.S. person and each holder of such U.S. account that is a specified U.S. person or U.S. owned foreign entity were a natural person and citizen of the United States. If foreign law would prevent the FFI from reporting the required information absent a waiver from the account holder, and the account holder fails to provide a waiver within a reasonable period of time, the FFI is required under section 1471(b)(1)(F) to close the account.

Section 1471(b)(1)(D)(i) requires a participating FFI to withhold 30 percent of any passthru payment to a recalcitrant account holder or to an FFI that does not meet the requirements of section 1471(b) (nonparticipating FFI). A passthru payment is defined in section 1471(d)(7) as any withholdable payment or other payment to the extent attributable to a withholdable payment. Section 1471(d)(6) defines a recalcitrant account holder as any account holder that fails to provide the information required to determine whether the account is a U.S. account, or the information required to be reported by the FFI, or that fails to provide a waiver of a foreign law that would prevent reporting. A participating FFI may, subject to such requirements as the Secretary may provide, elect under section 1471(b)(3) not to withhold on passthru payments, and instead be subject to withholding on payments it receives, to the extent those payments are allocable to recalcitrant account holders or nonparticipating FFIs. Section 1471(b)(1)(D)(ii) requires a participating FFI that does not make such an election to withhold on passthru payments it makes to any participating FFI that makes such an election.

Section 1471(e) provides that the requirements of the FFI agreement shall apply to the U.S. accounts of the participating FFI and, except as otherwise provided by the Secretary, to the U.S. accounts of each other FFI that is a member of the same expanded affiliated group, as defined in section 1471(e)(2).

Section 1471(f) exempts from withholding under section 1471(a) certain payments beneficially owned by certain persons, including any foreign government, international organization, foreign central bank of issue, or any other class of persons identified by the Secretary as posing a low risk of tax evasion. Section 1472(a) requires a withholding agent to withhold 30 percent of any withholdable payment to an NFFE if the payment is beneficially owned by the NFFE or another NFFE, unless the requirements of section 1472(b) are met with respect to the beneficial owner of the payment. Section 1472(d) defines an NFFE as any foreign entity that is not a financial institution as defined in section 1471(d)(5).

The requirements of section 1472(b) are met with respect to the beneficial owner of a payment if: (i) the beneficial owner or payee provides the withholding agent with either a certification that such beneficial owner does not have any substantial U.S. owners, or the name, address, and TIN of each substantial U.S. owner; (ii) the withholding agent does not know or have reason to know that any information provided by the beneficial owner or payee is incorrect; and (iii) the withholding agent reports the information provided to the Secretary.

Section 1472(c)(1) provides that withholding under section 1472(a) does not apply to payments beneficially owned by certain classes of persons, including any class of persons identified by the Secretary. In addition, section 1472(c)(2) provides that withholding under section 1472(a) does not apply to any class of payment identified by the Secretary for purposes of section 1472(c) as posing a low risk of tax evasion.

Section 1474(a) provides that every person required to withhold and deduct any tax under chapter 4 is made liable for such tax and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of chapter 4. In general, the beneficial owner of a payment is entitled to a refund for any overpayment of tax actually due under other provisions of the Code. However, with respect to any tax properly deducted and withheld under section 1471 from a payment beneficially owned by an FFI, section 1474(b)(2) provides that the FFI is not entitled to a credit or refund, except to the extent required by a treaty obligation of the United States (and, if a credit or refund is required by a treaty obligation of the United States, no interest shall be allowed or paid with respect to such credit or refund). In addition, section 1474(b)(3) provides that no credit or refund shall be allowed or paid with respect to any tax properly deducted and withheld under chapter 4 unless the beneficial owner of the payment provides the Secretary with such

information as the Secretary may require to determine whether such beneficial owner is a U.S. owned foreign entity and the identity of any substantial U.S. owners of such entity.

Section 1474(c) provides that information provided under chapter 4 is confidential under rules similar to section 3406(f), except that the identity of an FFI that meets the requirements of section 1471(b) is not treated as return information for purposes of section 6103.

Section 1474(d) provides that the Secretary shall provide for the coordination of chapter 4 with other withholding provisions under the Code, including providing for the proper crediting of amounts deducted and withheld under chapter 4 against amounts required to be deducted and withheld under other provisions.

Section 1474(f) provides that the Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of, and prevent the avoidance of, chapter 4.

IV. Balanced and Integrated Approach to Implementing Chapter 4

Chapter 4 grants the Secretary of the Treasury broad regulatory authority to prescribe rules and procedures relating to the diligence, reporting, and withholding obligations of the statute. These final regulations exercise this authority by providing specific operational guidelines for implementing FATCA in a manner consistent with its principal policy objectives. Recognizing that there are costs associated with the implementation of any new withholding and reporting regime, the Treasury Department and the IRS solicited comments and met extensively with stakeholders to develop an implementation approach that achieves an appropriate balance between fulfilling the important policy objectives of chapter 4 and minimizing the burdens imposed on stakeholders. This engagement resulted in hundreds of constructive comments from and numerous productive meetings with stakeholders. While the comments covered a broad range of issues relating to the implementation of FATCA, the vast majority of commenters expressed concerns regarding the costs and burdens associated with implementing FATCA and the legal impediments to compliance in a number of jurisdictions. Comments also expressed concerns regarding the procedural and systems aspects of registering and reporting.

The Treasury Department and the IRS carefully considered these comments and established three avenues for addressing the principal concerns regarding burdens, legal impediments, and technical implementation. The first avenue was to adopt a risk-based approach to implementing the statute that effectively addresses policy considerations, eliminates unnecessary burdens, and, to the extent possible, builds on existing practices and obligations. The second avenue was to collaborate with foreign governments to develop an alternative intergovernmental approach to implementing chapter 4 that removes legal impediments, allows for alignment and coordination with local law reporting practices, and achieves further burden reductions. The third avenue was to develop administrative approaches to simplify the process for registering and entering into an agreement with the IRS in order to minimize operational costs associated with collecting and reporting FATCA information.

A. Targeted Regulations

These final regulations address potential administrative burdens associated with FATCA compliance by adopting a risk-based and targeted approach to implement the statute with respect to scope, diligence, and timing. In particular, with respect to scope, consistent with the objectives of the statute, the regulations limit the institutions, obligations, and accounts subject to FATCA to more specifically target concerns and address practical considerations. For example, the final regulations refine the scope of FATCA in the following ways:

- *Expansion of Grandfather Rule for Certain Obligations.* To promote the orderly implementation of FATCA, the final regulations exempt from chapter 4 withholding all obligations outstanding on January 1, 2014, and any associated collateral. In addition, because evolving areas of the law may create chapter 4 withholding obligations in the future and create uncertainty and risk in the meantime, the final regulations address obligations (and associated collateral) that may give rise to withholdable payments through future regulations under section 871(m) (relating to dividend equivalent payments) or to foreign passthru payments under the chapter 4 foreign passthru payment rules. Such obligations are grandfathered if the obligations are outstanding at any point prior to six months after the implementing regulations are published.
- *Scope of Covered Financial Institutions.* In response to comments, the final regulations treat passive entities that are not professionally managed as NFFEs rather than as FFIs. The final regulations also provide appropriate exemptions for financial institutions and certain passive NFFEs that are part of a nonfinancial group of companies and that support the operations of the group.
- *Expansion of Deemed Compliant and Other Exempt Categories.* The final regulations expand the categories of FFIs that are deemed to comply with FATCA without the need to enter into an agreement with the IRS in order to focus the application of FATCA on higher-risk financial institutions that provide services to the global investment community. In addition, the final regulations expand the scope of retirement funds that are considered exempt beneficial owners the income of which is not subject to chapter 4 withholding.

With respect to diligence, the final regulations reduce the administrative burdens associated with identifying U.S. accounts by calibrating due diligence requirements based on the value and risk profile of the account, and by permitting FFIs in many cases to rely on information they already collect. For example, the final regulations reduce the burdens associated with identifying U.S. accounts in the following ways:

- *Accounts exempt from review.* The final regulations exempt from review entirely all preexisting accounts held by individuals with a balance or value of $50,000 or less. This threshold is raised to $250,000 for preexisting accounts held by entities and for preexisting accounts that are cash value insurance and annuity contracts. In addition, the final regulations exempt insurance contracts with a balance or value of $50,000 or less from treatment as financial accounts.
- *Reduced diligence and documentation rules for lower value preexisting accounts.* In the case of preexisting accounts with a balance or value of $1,000,000 or less, the final regulations permit a participating FFI to determine whether any of its accounts held by individuals are U.S. accounts based solely on a search of electronically searchable account information for certain U.S. indicia. In addition, for such accounts held by passive NFFEs, the final regulations allow a withholding agent to rely on its review conducted for anti-money laundering due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining a certification.
- *Reliance on self-certification.* In the case of accounts held by entities, the final regulations expand the ability of FFIs to rely on a self-certification from

an account holder as to its chapter 4 status.

Finally, with respect to timing, the final regulations allow reasonable timeframes to review existing accounts and implement FATCA's obligations in stages to minimize burdens and costs consistent with achieving the statute's compliance objectives. For example:

• *Time allowed for review of pre-existing accounts.* The final regulations treat all accounts maintained by an FFI prior to January 1, 2014, as preexisting accounts. In addition, the final regulations allow participating FFIs and withholding agents until December 31, 2015, to document account holders and payees that are not prima facie FFIs.

• *Phased implementation of reporting.* The final regulations modify the due date for the first information report by requiring participating FFIs to file the first information reports with respect to the 2013 and 2014 calendar years not later than March 31, 2015.

• *Phased implementation of withholding on passthru payments and gross proceeds.* The final regulations exempt from withholding foreign passthru payments and gross proceeds from sales or dispositions of property occurring before January 1, 2017.

B. Intergovernmental Agreements

1. In General

In many cases, foreign law would prevent an FFI from reporting directly to the IRS the information required by the FATCA statutory provisions and these regulations, thus potentially exposing the FFI to withholding. Such an outcome would be inconsistent with FATCA's objective to address offshore tax evasion through increased information reporting. To overcome these legal impediments, the Treasury Department has collaborated with foreign governments to develop two alternative model intergovernmental agreements that facilitate the effective and efficient implementation of FATCA in a manner that removes domestic legal impediments to compliance, fulfills FATCA's policy objectives, and further reduces burdens on FFIs located in partner jurisdictions.

The first model intergovernmental agreement was published on July 26, 2012. A partner jurisdiction signing an agreement with the United States based on the first model (Model 1 IGA) agrees to adopt rules to identify and report information about U.S. accounts that meet the standards set out in the Model 1 IGA. FFIs covered by a Model 1 IGA that are not otherwise excepted or exempt pursuant to the agreement must identify U.S. accounts pursuant to due diligence rules adopted by the partner jurisdiction and report specified information about the U.S. accounts to the partner jurisdiction. The partner jurisdiction then exchanges this information with the IRS on an automatic basis. These standards ensure that the IRS will receive the same quality and quantity of information about U.S. accounts from FFIs covered by a Model 1 IGA as it receives from FFIs applying these final regulations.

A second model intergovernmental agreement was published on November 14, 2012. A partner jurisdiction signing an agreement with the United States based on the second model (Model 2 IGA) agrees to direct and enable all FFIs that are located in the jurisdiction, and that are not otherwise excepted or exempt pursuant to the Model 2 IGA, to register with the IRS and report specified information about U.S. accounts directly to the IRS in a manner consistent with chapter 4 and these final regulations, except as expressly modified by the Model 2 IGA. In the case of certain recalcitrant account holders, the information reported to the IRS by FFIs covered by a Model 2 IGA is supplemented by government-to-government exchange of information.

Both Model 1 IGAs and Model 2 IGAs (together, IGAs) contemplate that the partner jurisdiction will require all financial institutions that are located in the jurisdiction, and that are not otherwise excepted or exempt pursuant to the agreement, to identify and report information about U.S. accounts. In consideration of the full cooperation by the partner jurisdiction, the model agreements contemplate a number of simplifications and burden reductions associated with the application of FATCA in the partner jurisdiction. The Treasury Department and the IRS believe that IGAs represent efficient and effective ways of implementing the requirements of chapter 4 and will continue to conclude bilateral agreements based on the two models with interested jurisdictions. In addition, the Treasury Department and the IRS continue to receive comments strongly supporting the approach to FATCA implementation embodied in the IGAs. The Treasury Department and the IRS remain committed to working cooperatively with foreign jurisdictions on multilateral efforts to improve transparency and information exchange on a global basis.

2. Interaction of IGAs With the Final Regulations

FFIs covered by a Model 1 IGA, and that are in compliance with local laws implemented to identify and report U.S. accounts in accordance with the terms of the Model 1 IGA, will be treated as satisfying the due diligence and reporting requirements of chapter 4. Accordingly, consistent with the terms of the Model 1 IGA, these FFIs do not need to apply the final regulations for purposes of complying with and avoiding withholding under FATCA. In certain cases prescribed in the Model 1 IGA, the laws of the partner jurisdiction may allow the resident FFI to elect to apply provisions of these regulations instead of the rules otherwise prescribed in the Model 1 IGA.

FFIs covered by a Model 2 IGA with the United States will be required to implement FATCA in the manner prescribed by these regulations except to the extent expressly modified by the Model 2 IGA. The final regulations accommodate such variations.

C. Streamlined Registration and Technical Implementation

FFIs registering with the IRS will be able to do so through a secure online web portal, the FATCA Registration Portal (Portal), from anywhere in the world. The Portal is designed to accomplish an entirely paperless registration process. Registering FFIs will be able to use the Portal to register their chapter 4 status (such as participating FFI or reporting Model 1 FFI (both as defined in the final regulations)), manage their registration information, and, as appropriate, agree to the terms of or make the representations required for their status. The Portal will also facilitate electronic communication between the IRS and FFIs and other registrants. Registered FFIs designated as leads of an expanded affiliated group will be able to use the Portal to manage the registration status of group members. The Portal will also be used by registering FFIs that are already Qualified Intermediaries (QIs) to renew their QI status. An FFI's submission and maintenance of registration information through the Portal will maximize processing efficiencies, minimize errors, and ensure expedient issuance of a Global Intermediary Identification Number (''GIIN''). An FFI will use its GIIN to establish its chapter 4 status for withholding purposes and to identify the institution for reporting purposes under the final regulations. The IRS currently contemplates that the GIIN may also be used by reporting Model 1 FFIs to satisfy reporting requirements under local law and is discussing this possibility with its Model 1 IGA partners. With regard to reporting, the IRS is also discussing with partner jurisdictions the possibility of adopting

a single format for reporting FATCA information, whether that information is reported directly to the IRS or to the tax administration in a Model 1 IGA jurisdiction.

The IRS also anticipates that the certifications of compliance required to be made by responsible officers pursuant to §§ 1.1471–4(c)(7) and 1.1471–4(f)(3) will be made electronically through the Portal, resulting in similar efficiencies.

Summary of Comments and Explanation of Revisions

I. In General

The Treasury Department and the IRS received a number of general comments requesting improvements to the readability of the proposed regulations. In response, the Treasury Department and the IRS made substantial changes in the final regulations to simplify and clarify the chapter 4 rules. In addition, the Treasury Department and the IRS received numerous specific comments regarding the proposed regulations and made numerous changes to the final regulations in response to those comments.

The following discussion addresses the significant changes in the final regulations from the proposed regulations. To facilitate this discussion, the defined terms from § 1.1471–1(b) are used throughout.

II. Comments and Changes to § 1.1471–1—Scope of Chapter 4 and Definitions

The chapter 4 definitions have been revised to reflect the IGAs and other changes adopted in the final regulations. Revisions of the definitions are discussed as relevant in the succeeding sections of this preamble.

III. Comments and Changes to § 1.1471–2—Requirement To Deduct and Withhold Tax on Withholdable Payments to Certain FFIs

A. Grandfathered Obligations

Comments requested modifications to the scope of grandfathered obligations to facilitate market transition and allow time for adapting master agreements and collateral arrangements in light of the IGAs, the future issuance of guidance under section 871(m), and other systems developments. In response, the final regulations provide that grandfathered obligations consist of: (1) Any obligation outstanding on January 1, 2014; (2) any obligation that produces withholdable payments solely because the obligation is treated as giving rise to a dividend equivalent pursuant to section 871(m) and the regulations thereunder and that is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalents; and (3) any agreement requiring a secured party to make payments with respect to collateral securing one or more grandfathered obligations (even if the collateral is not itself a grandfathered obligation). If collateral (or a pool of collateral) secures both grandfathered obligations and obligations that are not grandfathered, the collateral posted to secure the grandfathered obligations must be determined by allocating (pro rata by value) the collateral (or, in the case of a pool of collateral, each item comprising the pool of collateral) to all outstanding obligations secured by the collateral (or pool of collateral).

In addition, the final regulations provide that an obligation will not give rise to a foreign passthru payment if it is executed on or before the date that is six months after the date on which final regulations defining the term foreign passthru payment are filed with the **Federal Register**. Comments also requested clarification of the outstanding date of a debt instrument that is reopened in a qualified reopening under § 1.1275–2(k). For debt obligations, the final regulations determine the date the obligation is outstanding based on the issue date of the debt. Thus, whether debt issued in a qualified reopening will be treated as a grandfathered obligation depends on the issue date of the original debt, which is the issue date of the debt issued in the qualified reopening.

The final regulations also provide that the date a non-debt obligation is outstanding is the date a legally binding agreement is executed. Thus, a line of credit or a revolving credit facility for a fixed term may qualify as an obligation provided that the agreement as of its issue date fixes the material terms (including a stated maturity date) under which the credit will be provided.

In response to comments regarding insurance contracts, the final regulations provide that: (1) a life insurance contract payable no later than upon the death of the insured individual(s) is an obligation that may qualify as a grandfathered obligation; and (2) premiums paid for an insurance contract or annuity contract that is treated as a grandfathered obligation are treated as payments made under a grandfathered obligation.

Finally, comments requested provisions to simplify a withholding agent's determination of whether an obligation is grandfathered. Accordingly, the final regulations provide that: (1) A withholding agent, other than the issuer of the obligation (or an agent of the issuer) may, absent actual knowledge, rely on a written statement by the issuer of the obligation to determine whether such obligation meets the requirements for grandfathered treatment; (2) a withholding agent is required to treat a modification as material only if the withholding agent knows or has reason to know that such modification was material; and (3) a withholding agent, other than the issuer of the obligation (or an agent of the issuer), absent actual knowledge, will have reason to know of a material modification if it receives a disclosure thereof from the issuer of the obligation (or from such issuer's agent).

B. Other Changes to the Withholding Provisions

Comments requested that the withholding provisions under chapter 4 conform with certain withholding provisions of chapter 3. In addition, comments requested that the election to be withheld upon under section 1471(b)(3) and provided in the proposed regulations be available on an account-by-account basis. In response to these comments, the final regulations: (1) Clarify the exception to withholding when a withholding agent lacks control, custody, or knowledge of a payment; (2) treat a payment as a withholdable payment in the absence of knowledge of its source or character, or allow for up to a one-year escrow of 30 percent of the payment pending a determination of the relevant facts; and (3) permit the election to be withheld upon pursuant to § 1.1471–2(a)(2)(iii) to be made on an account-by-account basis, provided other applicable requirements are satisfied.

IV. Comments and Changes to § 1.1471–3—Identification of Payee

A. Documentation Alternatives

1. In General

Comments requested that the final regulations generally permit a withholding agent to rely upon a withholding certificate to establish the chapter 4 status of a payee without obtaining additional documentary evidence, unless such documentary evidence is required under chapter 3. This comment was adopted. The final regulations further expand the types of documentary evidence upon which a withholding agent may rely with respect to offshore obligations, including government Web sites and reports from government agencies. For preexisting obligations, the final regulations permit a withholding agent to rely on information previously recorded in the withholding agent's files, in addition to

standardized industry codes, in determining the chapter 4 status of the payee. For these purposes, a standardized industry code may be any coding system employed by the withholding agent.

2. Written Statements

Comments requested that the final regulations permit reliance on written statements without additional documentation for offshore obligations that do not generate payments of U.S. source FDAP income (such as a depository account maintained outside of the United States by an FFI) and enumerate the elements they must contain. This comment was adopted. A written statement may also be relied upon with respect to an offshore obligation that generates payments of U.S. source FDAP income if it is accompanied by documentary evidence establishing the foreign status of the person named on the written statement.

Comments noted that signed documentation outside of the United States generally does not require signature under penalties of perjury, and that such a requirement would depart from current AML due diligence procedures. The final regulations remove the penalties of perjury requirement for written statements used as documentation for payments made outside of the United States on offshore obligations, other than for payments of U.S. source FDAP income.

3. Substitute and Non-IRS Forms

Comments requested the ability to use substitute forms, including forms prepared or filled out in a foreign language. In response, the final regulations provide that substitute forms may be both prepared in and filled out in a foreign language, provided the withholding agent furnishes the IRS with a translated version upon request. Such substitute forms must contain the same certifications as the official IRS form to the extent relevant. For this purpose, a substitute form for individuals is acceptable, provided that the form contains the required information, including the individual's permanent residence address, all relevant tax identification numbers, and, if not signed under penalties of perjury, the withholding agent has obtained applicable documentary evidence that supports the person's claim of foreign status. Qualifying non-IRS forms may be used within the United States as well as for offshore obligations, and also may be used for purposes of chapter 3 to the extent provided in § 1.1441–1(e)(4)(vi).

4. Reliance on Pre-FATCA Form W–8

In response to comments that FFIs would have difficulty obtaining new documentation on all preexisting account holders in a compressed time frame, the final regulations provide that a withholding agent may rely upon a pre-FATCA Form W–8 in lieu of obtaining an updated version of the withholding certificate in certain circumstances.

5. Curing Inconsequential Errors

Comments requested that a minor error in a withholding certificate not invalidate the certificate if the error can be cured with supplemental information already on file for the payee. In response, the final regulations provide that a withholding agent may treat a withholding certificate as valid, notwithstanding an inconsequential error, if it otherwise has sufficient documentation to cure the error that does not contradict the information on the withholding certificate. A failure to make a required certification, or to provide a country of residence (or country under which treaty benefits are sought), is not an inconsequential error.

B. Continuing Validity of Documentation

Comments requested relief from the general requirement to refresh documentation every three years. In response, the final regulations permit documentation to remain valid indefinitely, subject to a change in circumstances, if the chapter 4 status claimed is a specified low-risk category. The Treasury Department and the IRS are considering extending the final regulations' validity rule to chapter 3 in appropriate circumstances (for example, when the payee does not make a claim that withholding under chapter 3 is reduced pursuant to a treaty).

C. Owner-Documented FFIs

In response to comments requesting reduced documentation requirements for the owner-documented FFI provisions, the final regulations make several modifications that also take into account the policy considerations presented by owner-documented FFIs. These modifications include: (1) permitting transitional reliance, subject to certain requirements, on documentation collected for AML due diligence purposes for payments made prior to January 1, 2017, on preexisting obligations; (2) allowing such entities to issue debt interests to an expanded group of holders, provided such debt holders are reported in the same manner as equity holders; (3) simplifying the withholding statement provided for an owner-documented FFI; and (4) providing for indefinite validity for withholding certificates and withholding statements submitted with respect to obligations having an aggregate value equal to or less than $1,000,000.

D. ''Eyeball Test'' and Effectively Connected Income Presumption

Comments requested that chapter 4 incorporate the so-called ''eyeball test'' under chapters 3 and 61 that treats payments inside the United States to certain entities that have ''incorporated,'' ''corporation,'' or an indication of status as a financial institution in their names as made to U.S. exempt recipients. Moreover, comments noted that withholding agents often already obtain documentary evidence for these entities to satisfy AML due diligence requirements. In response to these comments, the final regulations permit a withholding agent to rely upon documentary evidence obtained with respect to the payee, in lieu of a Form W–9, in order to establish the entity's status as a U.S. person and rely on the ''eyeball test'' to determine (to the extent applicable) the payee's status as other than a specified U.S. person under chapter 4.

Comments also requested that the final regulations incorporate the chapter 3 rules under which withholding agents are permitted to presume that payments made to U.S. branches of certain banks and insurance companies are payments of income that is effectively connected with the conduct of a trade or business within the United States. In response, the regulations permit a withholding agent to presume that a payment made to a U.S. branch of certain banks and insurance companies is a payment of income that is effectively connected with a trade or business within the United States (and thus not a withholdable payment) if the withholding agent obtains a GIIN that enables the withholding agent to confirm that the FFI is a participating FFI or registered deemed-compliant FFI, as well as an EIN for the U.S. branch that enables the withholding agent to properly report the payment. Conforming changes are anticipated to be made to the presumption rule in chapter 3 to provide consistency with the rule set forth in these regulations.

E. Rules for Offshore Obligations of Funds and New Accounts of Preexisting Customers

Comments requested additional clarity regarding when an interest in an investment fund should be treated as an offshore obligation. Comments also

stated that, in general, an investment fund's office is not separate from that of its manager or administrator, and shares issued by investment funds are not ''maintained and executed'' at a particular office. In response to these comments, the definition of an offshore obligation has been amended to clarify that an offshore obligation also includes an equity interest in a foreign entity if the owner of the interest purchased the interest outside the United States either directly from the foreign entity or from another entity located outside the United States.

Comments also requested that a new account of a preexisting customer be treated as a preexisting obligation. Comments stated that in such cases, withholding agents and FFIs generally do not get additional documentation from the customer because they are not required to do so for AML due diligence purposes. In response to these comments, the final regulations permit a new account of a customer that has a preexisting obligation to be treated as a preexisting obligation, provided that the withholding agent or FFI maintaining the account also treats the new obligation and the prior obligation as one obligation for purposes of applying AML due diligence, aggregating balances, and applying the standards of knowledge for purposes of chapter 4. The final regulations also permit this treatment to apply on a group basis for expanded affiliated groups and sponsored FFI groups.

F. Standards of Knowledge

Under the final regulations, the standards of knowledge provisions have been modified to allow withholding agents to rely on a claim of status as a participating or registered-deemed compliant FFI based on checking the payee's GIIN against the published IRS FFI list. Prior to January 1, 2015, a withholding agent is not required to confirm GIINs regarding an FFI's claim of status as a reporting Model 1 FFI. However, an FFI will have reason to know that such claim is unreliable if the withholding agent does not have a permanent residence address for the FFI (or address of the relevant branch) in the relevant country that has in effect a Model 1 IGA.

The final regulations further provide: (1) Limits, generally conformed with the chapter 3 limits, on a withholding agent's reason to know regarding a payee's claim of status as a foreign person; (2) limits on the review that must be conducted with respect to particular types of documentation, and in particular on the scope of review with respect to preexisting obligations; and (3) further guidance regarding when a payee has made a reasonable explanation regarding the presence of U.S. indicia. The Treasury Department and the IRS intend to issue guidance under chapter 3 that is consistent with the rules in these regulations regarding such reasonable explanations.

G. Reliance on Presumptions in Lieu of Documentation

Under the final regulations, a withholding agent may choose to rely on presumption rules in lieu of accepting and reviewing documentation of payees. This accommodates withholding agents that are unsure whether the documentation they have obtained is reliable or that do not wish to accept the responsibility associated with the acceptance of the documentation.

H. Consolidation and Sharing of Documentation, and Third-Party Reliance

Comments requested reduction of duplicative documentation requirements, facilitation of documentation sharing, and more detailed rules regarding reliance on agents or third-party service providers. In response, the final regulations adopt the following provisions.

1. Multiple Accounts of the Same Payee

The final regulations provide rules (consistent with chapter 3 in § 1.1441–1(e)(4)(ix)(A)) for a withholding agent to rely on documentation for multiple accounts of the same payee if the withholding agent aggregates the balance or value of those accounts (when relevant) and shares information across those accounts for purposes of determining when the withholding agent has actual knowledge or reason to know that the chapter 4 status claimed is inaccurate.

2. Mergers or Bulk Acquisitions

The final regulations provide a temporary six month period during which withholding agents that acquire accounts in a merger or bulk acquisition for value may rely, in the absence of contrary knowledge or a change in circumstances, upon the chapter 4 statuses assigned by a predecessor that is a U.S. withholding agent, a participating FFI, or a reporting Model 1 FFI that has completed all due diligence required under its agreement or pursuant to the applicable Model 1 IGA, provided that the predecessor is not a member of the withholding agent's expanded affiliated group prior to a merger or bulk acquisition, or after a bulk acquisition. At the end of the temporary period, the acquirer may continue to so rely only if the documentation it has, including the acquired documentation, supports the chapter 4 statuses claimed.

3. Common Agents

The final regulations provide rules (consistent with § 1.1441–1(e)(4)(ix)(A)(4) and (B)) with respect to sharing and relying upon documentation that has been provided by a common agent for multiple parties, including a fund advisor or principal underwriter that collects documentation for a family of mutual funds. This reliance is made contingent upon the agent also sharing any knowledge regarding inaccuracy or unreliability of the chapter 4 status claims across all the withholding agents with which the agent shares the documentation.

4. Third-Party Data Providers

The final regulations provide rules permitting a withholding agent to rely upon documentation collected with respect to an entity by a third-party data provider, subject to conditions including: (1) The third-party data provider is in the business of collecting information regarding entities and providing business reports or credit reports to unrelated customers and must have reviewed all information it has for the entity and verified that such additional information does not conflict with the chapter 4 status claimed by the entity; (2) the third-party data provider collects documentation sufficient to meet the applicable documentation requirements; and (3) the third-party data provider provides notice of changes in circumstances. This provision permits withholding agents to rely upon documentation collected by a third-party data provider, but does not relieve the withholding agent of the obligation to determine whether that documentation is reliable based on the information contained in the documentation and other information in the withholding agent's files.

5. Introducing Brokers

Comments requested that for purposes of chapter 4 a withholding agent be permitted to rely upon certifications regarding a payee's chapter 4 status provided by an introducing broker that is a QI or participating FFI (in addition to introducing brokers who are U.S. persons, as provided under the proposed regulations). In response to these comments, the final regulations permit reliance upon a certification provided by a participating FFI (which includes a QI that is a financial institution) if the participating FFI is

acting as an agent of the payee with respect to an obligation and receiving all payments made by the withholding agent with respect to that obligation on behalf of the payee, provided that certain requirements are met and the withholding agent does not know or have reason to know that the broker has not obtained valid documentation as represented or the information contained in the certification is otherwise inaccurate.

6. Transfer Agents

Comments requested that a transfer agent's obligations as a withholding agent be limited to the obligations of the principal on behalf of which the transfer agent acts in order to avoid duplicative efforts or conflicts between the standards applicable to the transfer agent and the principal. In response, the final regulations provide that merely acting as an agent with respect to a financial account belonging to the principal will not cause the agent to also have a financial account for that customer unless the agent would be treated as having the financial account independent of its actions as an agent. An agent that makes a payment on behalf of a principal is a withholding agent with respect to the payment and, accordingly (as under chapter 3) has a responsibility to determine the chapter 4 status of the payee and withhold, if required. However, because the obligation belongs to the principal, the level of due diligence that must be completed with respect to the obligation is determined by the obligation's status with respect to the principal. In order to minimize any duplicative responsibilities, the final regulations permit the agent to rely (absent contrary knowledge or reason to know) upon documentation collected by the principal or a certification by the principal that appropriate documentation has been collected.

I. Electronic Transmission of Documentation

Comments requested that a withholding agent be permitted to rely upon withholding certificates that are signed with a handwritten signature, scanned into an electronic device, and then emailed to the withholding agent. The final regulations adopt the rule of the proposed regulations, which permits the electronic transmission of a withholding certificate that has been signed with a handwritten signature and then scanned and emailed to the withholding agent if the requirements of § 1.1441–1(e)(4)(iv) are met. Further, the Treasury Department and the IRS continue to consider whether to retain the confirmation requirements in chapters 3 and 4. In addition, in response to comments, the final regulations do not require that documentary evidence that has been transmitted electronically be a certified or notarized copy.

J. Other Changes Made to Payee Identification Rules

Consistent with a risk-based approach to compliance under chapter 4, the final regulations adopt in whole or part several modifications requested by comments, including modifications to:

(1) Permit documentary evidence that does not contain an address, provided that the documentary evidence contains the person's country of residence or citizenship, and the withholding agent has obtained a permanent residence address for the person.

(2) Include a director, any foreign equivalent of an officer in the United States, and any other person granted written authority as a person authorized to sign a withholding certificate or written statement.

(3) Permit, in lieu of retention of copies of documentation, the retention of notations regarding documentation reviewed and (for obligations that are not preexisting obligations) any U.S. indicia identified, in the course of AML due diligence.

(4) Treat registered deemed-compliant FFIs as payees under the same circumstances in which participating FFIs are treated as payees.

(5) Treat all excepted NFFEs in the same manner, and provide that any excepted NFFE is the payee, unless it is acting as an agent or intermediary (other than a QI accepting primary withholding responsibility).

(6) Permit the submission of a withholding certificate within 30 days of payment (rather than the 15 days permitted in the proposed regulations) without an affidavit of accuracy as of the time of payment.

(7) Provide a definition for the term standing instructions to pay amounts to include current payment instructions that will repeat without further instructions being provided by the account holder.

(8) Clarify that a withholding statement submitted by a participating FFI or registered deemed-compliant FFI can include pooled information with respect to each class of payees unless payee-specific information is provided for purposes of chapter 3, in which case a chapter 4 status must be provided for each payee that is identified on the withholding statement.

V. Comments and Changes to § 1.1471–4—FFI Agreement

A. In General

1. FFI Agreement

The Treasury Department and the IRS received comments requesting additional guidance on the requirements of the FFI agreement. In response to these comments, the final regulations set forth all of the substantive requirements applicable to an FFI under the FFI agreement. The final regulations provide the requirements for verifying compliance with the FFI agreement, define an event of default and procedures for remediating of an event of default, allow participating FFIs to file collective refund claims on behalf of certain account holders and payees for amounts overwithheld, and provide procedural requirements if a participating FFI is legally prohibited from reporting or withholding as required under the FFI agreement. In addition, the final regulations do not restrict a participating FFI's ability to terminate an FFI agreement. This responds to comments concerning future withholding requirements for foreign passthru payments, and allows an FFI the flexibility to reconsider its status as further guidance is promulgated.

The Treasury Department and the IRS expect to publish a revenue procedure setting out the terms of an FFI agreement, consistent with these final regulations, coordinating an FFI's obligations under the FFI agreement with chapter 3 obligations and with the provisions of any applicable IGA, and including administrative provisions such as those relating to termination, renewal, and modification of the agreement.

2. Effective Date of the FFI Agreement

Many comments were received regarding the effective date provided in the proposed regulations for implementing the chapter 4 rules. Comments requested a delay of the effective date of the FFI agreement to allow FFIs sufficient time to modify systems and to implement the required account opening procedures. In response to comments, the final regulations delay the effective date of the FFI agreement until December 31, 2013, for all participating FFIs that receive a GIIN prior to January 1, 2014. This change aligns the effective date of, and due diligence periods under, the FFI agreement with the timelines provided under the IGAs.

3. U.S. Branches of Participating FFIs

Comments requested further clarifications on the application of the chapter 4 rules to U.S. branches of participating FFIs. In response to these comments, the final regulations provide comprehensive rules for U.S. branches of participating FFIs. A U.S. branch of a participating FFI that is treated as a U.S. person, as provided in § 1.1441–1(b)(2)(iv), is subject to special requirements to fulfill the withholding, due diligence, and reporting requirements of a U.S. financial institution to the extent provided under chapters 4 and 61 and section 3406(a). Additionally, such a U.S. branch is required to file a separate Form 1042 to report amounts subject to reporting under chapter 4 and any taxes withheld.

A U.S. branch of a participating FFI that is not treated as a U.S. person is required to fulfill the general requirements set forth in § 1.1471–4 for withholding, due diligence, and reporting.

B. Withholding by FFIs

The final regulations provide that an FFI is not required to withhold on foreign passthru payments until the later of January 1, 2017, or six months after the date of publication in the **Federal Register** of final regulations defining the term foreign passthru payments.

Comments requested more comprehensive rules concerning the withholding requirements of a participating FFI under the FFI agreement. In response to these comments, the final regulations provide that a participating FFI may apply the exceptions from withholding provided in § 1.1471–2, including the exception for grandfathered obligations and the transitional withholding requirements for payments made to prima facie FFIs. In addition, the proposed regulations did not provide detail on the coordination of withholding under sections 1471(a) and 1472 with withholding under section 1471(b). The final regulations provide that a participating FFI that satisfies its obligations under § 1.1471–4(b) to withhold on withholdable payments made to payees that are nonparticipating FFIs and recalcitrant account holders will be deemed to satisfy its obligations under sections 1471(a) and 1472 with respect to such payees and account holders.

C. Due Diligence

The final regulations adopt numerous comments intended to assist participating FFIs in complying with their obligations to perform due diligence to identify and document account holders.

1. General Requirements for Due Diligence

In response to comments, the final regulations modify the general requirements for identifying and documenting account holders in a number of ways. For example, the final regulations modify the record retention requirements for offshore obligations to allow an FFI to retain a notation in its files regarding the documentary evidence examined, rather than retaining a copy of the documentary evidence itself, unless the FFI is required pursuant to its AML due diligence to retain copies of documentation reviewed. In such cases, the final regulations no longer require a notation of the name of the person who reviewed the documentary evidence.

The final regulations also provide special procedures to identify and document accounts acquired in mergers or bulk acquisitions for value from another financial institution. For accounts acquired from nonparticipating FFIs or deemed-compliant FFIs that do not apply the final regulations' due diligence procedures, the final regulations allow a participating FFI to apply preexisting account identification and documentation procedures. For accounts acquired from another participating FFI, certain deemed-compliant FFIs, or U.S. financial institutions, the final regulations allow a participating FFI to rely on the chapter 4 determinations made by such transferor financial institution, subject to certain conditions. Additionally, the final regulations in § 1.1471–4 incorporate by reference the revised rules for documentation standards, validity periods of documentation, and reliance on valid documentation collected by other withholding agents provided in § 1.1471–3(c).

2. Account of a Preexisting Customer and Sharing of Account Documentation

Comments requested that a new account opened at an FFI by a customer that has a preexisting account with the FFI be treated as a preexisting account rather than a new account. Comments stated that in such cases, FFIs generally do not obtain documentation from the customer for AML due diligence purposes. Recognizing the substantial burden for the FFI to separately document an existing customer, the final regulations revise the definition of a preexisting obligation to permit a new account of a customer that has a preexisting account to be treated as a preexisting account provided that the FFI maintaining the account also treats the new account and the preexisting account as one account for purposes of applying AML due diligence, aggregating balances, and applying the standards of knowledge for purposes of chapter 4 to all such accounts. The final regulations allow this treatment on a group basis for expanded affiliated groups and sponsored FFI groups that share documentation within the group. In addition, to address comments concerning the burden of documenting multiple accounts of a customer generally (regardless of whether any such accounts are preexisting accounts), the final regulations allow a participating FFI, participating FFI group, or a sponsored FFI group to apply the provisions for documentation sharing systems described in § 1.1471–3(c)(8).

3. Change in Circumstances

In response to comments that the obligations of a participating FFI following a change in circumstances were unclear in the proposed regulations, the final regulations provide that an FFI must retain a record of documentation to establish the account holder's chapter 4 status within the earlier of 90 days from the date of a change in circumstances or the date a withholdable payment or foreign passthru payment is made to the account or, if unable to do so, must treat such account as held by a recalcitrant account holder or nonparticipating FFI (as applicable).

4. Entity Accounts

Comments indicated that for certain investment entities, direct investment may be held in bearer form so that the investment entity is unable to document such account holders until the time of payment. The final regulations allow a participating FFI that is an investment entity to document an account holder of a preexisting account that is in bearer form at the time of payment.

The final regulations clarify that in addition to documenting the entity account holder, a participating FFI is also required to document the payee (if other than the account holder) to the extent necessary to determine whether withholding applies. For example, if an account is held by an NFFE that is a flow-through entity (other than a WP, WT, or excepted NFFE), the participating FFI is also required to identify and document the partners, owners, or beneficiaries of such entity to determine if withholding is required

with respect to payments of U.S. source FDAP income made to such account.

5. Individual Accounts

a. New Accounts

Comments requested alternative documentation options to address difficulties in obtaining U.S. tax forms from account holders. In response to these comments, the final regulations modify the identification and documentation procedures of participating FFIs with respect to individual accounts that are new accounts to permit certain alternative forms of documentation. For example, the final regulations permit a participating FFI to rely on information provided by a third-party credit agency to establish an account holder's foreign status when certain conditions are met.

The final regulations adopt the requirement in the proposed regulations for a participating FFI to review all information collected in connection with the opening or maintenance of each account, including documentation collected as part of the participating FFI's account opening procedures and documentation collected for other regulatory purposes, to determine if an account holder's claim of foreign status is unreliable or incorrect. The final regulations clarify that a participating FFI is required in such reviews to apply the standards of knowledge provided in § 1.1471–3(e) for offshore obligations held by individuals. If the participating FFI is not able to establish an account holder's status as a foreign person, the final regulations require the participating FFI to retain a record of a U.S. TIN and, if necessary, a valid and effective waiver described in section 1471(b)(1)(F)(i) to establish an account holder's status as a U.S. person. The final regulations allow a participating FFI to retain a record of a U.S. TIN by any means (that is, not exclusively by retaining a record of a Form W–9).

The final regulations also provide alternative identification and documentation procedures for certain cash value insurance or annuity contracts. Comments noted that when a group life insurance contract or group annuity contract is issued to an employer and individual employees are the insured/beneficiaries, the insurance company does not have a direct relationship with the employee/certificate holders at inception of the contract. In response, the final regulations do not require the insurance company to document each employee until the date on which an amount is payable to an employee/certificate holder or beneficiary if the participating FFI obtains a certification from an employer that no employee/certificate holder (account holder) is a U.S. person and certain other conditions are satisfied (for example, that the number of employees covered under the contract exceeds 25). Comments also requested relief from the requirement to identify and document beneficiaries of cash value insurance contracts. In response, the final regulations provide that a participating FFI may presume that an individual beneficiary (other than the owner) receiving a death benefit with respect to a life insurance contract that is a cash value insurance contract is a foreign person, and is therefore not required to retain a record of documentation from such person, unless the participating FFI has actual knowledge or reason to know that the beneficiary is a U.S. person. A participating FFI has reason to know that a beneficiary of a cash value insurance contract is a U.S. person if the information collected by the participating FFI and associated with the beneficiary contains U.S. indicia.

b. Preexisting Accounts

Comments requested clarification with regard to procedures for identifying and documenting preexisting accounts. In response to these comments, the final regulations provide a more detailed explanation of the application of these rules. For example, the final regulations expressly provide that a participating FFI is not required to retain a record of documentation from the account holder until there is a change in circumstances if the identification and documentation procedure specified for preexisting accounts is applied and no U.S. indicia are identified. In addition, the final regulations expressly provide that for preexisting accounts, a participating FFI may apply the identification and documentation procedure for either new accounts or preexisting accounts.

The proposed regulations did not coordinate the rules in § 1.1471–3(e) (covering standards of knowledge) with the documentation requirements under § 1.1471–4(c) to establish an account holder's foreign status when U.S. indicia are associated with the account. To provide such coordination, § 1.1471–4(c) incorporates by reference the standards of knowledge in § 1.1471–3(e).

c. Presumption of Status for Individual Accounts

Comments noted that the proposed regulations were unclear concerning the application of the presumption rules to individual account holders of participating FFIs. In response to these comments, the final regulations clarify that the presumption rules of § 1.1471–3(f) do not apply to individual account holders of a participating FFI. A participating FFI must complete the requisite identification and documentation procedures with respect to each account within the time period provided by § 1.1471–5(g)(3) (start of recalcitrant account holder status), or, if unable to do so, must treat such account as held by a recalcitrant account holder.

d. Preexisting Individual Accounts Previously Documented

With respect to the exception to the preexisting account identification procedure (other than the relationship manager inquiry) for an account documented as held by foreign individuals for purposes of chapter 61 or the QI, WP, or WT agreement, the final regulations clarify that an individual account holder's foreign status has been documented under chapter 61 if the participating FFI has retained a record of the documentation required under chapter 61 to establish the individual's foreign status and the account received a reportable payment (as defined under section 3406(b)) in any prior year. With respect to QIs, WPs, and WTs, an account holder's foreign status has been documented if the QI, WP, or WT has met the relevant documentation requirements of its agreement with respect to an account holder that received a reportable amount in any year in which the agreement was in effect.

e. Certifications of Responsible Officer

The final regulations retain the requirement in the proposed regulations for a responsible officer to certify, to the best of his/her knowledge after conducting a reasonable inquiry, that the participating FFI does not have any formal or informal practices or procedures in place to assist account holders in avoiding chapter 4, such as advising account holders to split up their accounts to avoid reporting as high-value accounts. Comments requested additional examples of policies that violate the certification. The final regulations provide such additional examples, including: advising that account holders of U.S. accounts close, transfer, or withdraw from their account to avoid reporting; intentional failures to disclose a known U.S. account; or advising that an account holder remove U.S. indicia from its account information. In response to comments, the final regulations also provide that an email requiring responses from relevant

customer on-boarding and management personnel as to whether they engaged in any such practices is considered a reasonable inquiry for purposes of the certification.

Comments requested specific timing for making the certifications regarding completion of required due diligence. The final regulations respond to these comments and also simplify and consolidate the certifications. The final regulations provide that these certifications may be made concurrently and no later than 60 days following the date that is two years after the effective date of the FFI agreement. See section V.F.3 of this preamble for a discussion of a responsible officer's periodic certification requirements.

Comments also requested clarification on a responsible officer's responsibilities if he/she could not make the required certification. The final regulations provide that a responsible officer may make a qualified certification stating why the general certification cannot be made and that corrective actions will be taken by the responsible officer.

D. Account Reporting

1. In General

As in the proposed regulations, the final regulations indicate that the FFI that maintains an account is generally responsible for reporting the account in accordance with the reporting rules under § 1.1471–4(d). The final regulations add in § 1.1471–5 a rule to determine if an FFI is treated as maintaining an account.

The final regulations describe the reporting responsibilities of a sponsoring entity that has agreed to fulfill the reporting requirements of a sponsored FFI and generally require the sponsoring entity to report accounts of the sponsored FFI in the manner the sponsored entity would otherwise be required to report if it were a participating FFI.

2. Account Balance or Value

In response to comments generally requesting that the final regulations accommodate current business practices of FFIs, the final regulations provide that a participating FFI must report the average balance or value of the account to the extent that the FFI reports average balances or values to the account holder for a calendar year and otherwise to report the balance or value of the account as of the end of the calendar year.

3. Payments

The final regulations clarify that any distribution (including a distribution that would be considered a redemption) made to an account holder with respect to a cash value insurance contract or annuity contract must be reported under § 1.1471–4(d)(4)(iv)(C) without regard to the U.S. tax treatment.

4. Section 953(d) Insurance Companies and Reporting in a Manner Similar to Section 6047(d)

Comments requested that a foreign insurance company that has made an election under section 953(d) be excluded from the definition of an FFI. The final regulations do not adopt this comment when the foreign insurance company is not licensed to do business in the United States. How a foreign insurance company and its United States shareholders are taxed is immaterial to the need for reporting with regard to insurance or annuity contracts issued by the insurance company to its customers. Therefore, the final regulations provide that the term U.S. person does not include an insurance company that has made an election under section 953(d) if the company is not licensed to do business in any State. However, a foreign insurance company that has made an election under section 953(d) and is licensed to do business in the United States would be considered, for purposes of chapter 4, a U.S. person and, therefore, would remain subject to reporting with respect to its life insurance and annuity contracts under section 6047(d), not chapter 4.

Comments also requested that a foreign insurance company be permitted to satisfy its chapter 4 reporting obligations by reporting under section 6047(d). Permitting a foreign insurance company that is not licensed to do business in the United States to report only the information required under section 6047(d) would provide insufficient reporting for FATCA purposes because section 6047(d) reporting applies only to distributions made under a contract issued by an insurance company licensed to do business under the laws of a State.

In response to the comments, however, the final regulations permit an insurance company participating FFI that is not licensed to do business in the United States to elect to report its chapter 4 account information with respect to its life insurance and annuity contracts in a manner similar to section 6047(d) reporting. Under this election, an insurance company participating FFI reports the sum of: (1) a cash value or annuity contract's account balance or value; and (2) any amount paid under the contract as a ''gross distribution'' in Box 1 of Form 1099–R. The participating FFI could then check box 2b to indicate the taxable amount is not determined.

5. Special Reporting for Calendar Year 2013

The final regulations incorporate the reporting requirements in Announcement 2012–42, 2012–47 I.R.B. 561 with respect to calendar year 2013. The final regulations provide that if an FFI agreement has an effective date that is on or before December 31, 2014, the participating FFI is required to report U.S. accounts that it maintained during 2013 that are outstanding on December 31, 2013. The final regulations adopt the streamlined reporting rules provided in the proposed regulations. The final regulations also eliminate the proposed regulations' requirement for reporting by September 30, 2014, and instead permit participating FFIs to report for both calendar years 2013 and 2014 on or before March 31, 2015.

E. Expanded Affiliated Group Requirements

The final regulations do not incorporate comments suggesting the sunset date for limited branches and limited FFIs be extended beyond December 31, 2015. The final regulations also do not adopt suggestions to relax the requirement that all members of an expanded affiliated group be participating FFIs, deemed-compliant FFIs, or limited FFIs. The Treasury Department and the IRS believe that IGAs are the appropriate vehicle to address these concerns.

F. Verification

1. In General

The final regulations include the verification and certification requirements for participating FFIs. These verification procedures rely on a responsible officer (or designee) to establish a compliance program that includes policies, procedures, and processes sufficient for the participating FFI to satisfy the requirements of the FFI agreement. The participating FFI must subject its compliance program to periodic review. The responsible officer may be any officer of any participating FFI or reporting Model 1 FFI in the participating FFI's expanded affiliated group with sufficient authority to fulfill the duties of a responsible officer described in the final regulations. The responsible officer may designate others to implement and oversee the compliance with the verification requirements, but must make any required certifications to the IRS (as described below).

2. Consolidated Compliance Program

In response to comments supporting the approach set forth in Notice 2011–34 for an optional consolidated compliance program, the final regulations provide for such a program. Under the final regulations, a participating FFI, reporting Model 1 FFI, or U.S. financial institution (compliance FI) may agree to establish and maintain a consolidated compliance program and perform a consolidated periodic review on behalf of one or more FFIs in the same expanded affiliated group that elect this option (the consolidated compliance group). The consolidated compliance group is not required to include every FFI in the expanded affiliated group, and an expanded affiliated group may have multiple consolidated compliance groups organized under different or the same compliance FI. The final regulations also require a sponsoring entity to act as the compliance FI for all of the FFIs that it sponsors (including any certified deemed-compliant FFIs that it sponsors).

It is anticipated that additional guidance will be provided in either the instructions to the registration system or the FFI agreement for an electing FFI to identify itself as part of a consolidated compliance group and procedures for the responsible officer of the compliance FI to make the required certifications on behalf of the consolidated compliance group.

3. Certification of Compliance

The final regulations require the responsible officer, on behalf of the participating FFI, to periodically certify to the IRS that the FFI is in compliance with the requirements of the FFI agreement. Such certification is required once every three years. In advance of such certification, a participating FFI is required to review its compliance program and its compliance with the requirements of the FFI agreement. In consideration of the results of this review, the responsible officer is required to certify to the IRS that it maintains effective internal controls and that there were no material failures during the certification period, or any material failures that did occur were corrected. A material failure is a failure of the participating FFI to fulfill the requirements of the FFI agreement if the failure was the result of a deliberate action by the participating FFI to avoid the requirements of the FFI agreement or was an error attributable to a failure to implement sufficient internal controls. The final regulations provide that a material failure that occurs in limited circumstances will not result in an event of default. If a material failure occurring during the certification period has not been corrected, or if an event of default has occurred, the final regulations provide that a responsible officer may instead make a qualified certification.

4. IRS Review of Compliance

Comments requested guidance on the standards the IRS would apply when requesting additional information from a participating FFI to determine its compliance with its FFI agreement. The final regulations provide for general inquiries under which the IRS contacts the participating FFI to request additional information regarding the information reported on the returns filed by the participating FFI, and for inquiries when the IRS determines in its discretion that there may have been substantial non-compliance with an FFI agreement. The IRS expects that inquiries regarding substantial non-compliance will not be made on a routine basis. If a determination that there may have been substantial non-compliance is made, the IRS may inquire as to the FFI's compliance with certain requirements of the FFI agreement and may request information necessary to verify the participating FFI's compliance with the FFI agreement, such as a description of the participating FFI's procedures for conducting its periodic review. The IRS may also request the performance of specified review procedures (including an external audit). If the IRS determines, based upon its review, that the FFI has not substantially complied with the requirements of an FFI agreement, it will deliver a notice of event of default.

G. Event of Default

The final regulations define an event of default of the FFI agreement and describe procedures for a participating FFI to remediate an event of default. Comments expressed concern that any failure to comply with an FFI agreement would result in termination of that agreement. In response to these comments, the final regulations clarify that an event of default does not result in automatic termination of the FFI agreement. The final regulations provide that if the IRS becomes aware of an event of default, it will deliver a notice of default to the participating FFI and allow the participating FFI to develop a plan to remediate the event of default. If the participating FFI fails to respond to the notice of default or comply with an agreed-upon remediation plan, the IRS may terminate the FFI's participating FFI status within a reasonable period of time, subject to an FFI's request for reconsideration of termination by written request to the LB&I Director for Foreign Payments Practice.

H. Collective Refunds

The final regulations provide that a participating FFI (or a reporting Model 1 FFI) may file a collective refund claim on behalf of its account holders and payees that were overwithheld upon under chapter 4, subject to certain conditions and procedural requirements.

I. Legal Prohibitions on Reporting U.S. Accounts and Withholding

In response to comments requesting clarification on whether an FFI can enter into an FFI agreement if foreign law imposes prohibitions on the FFI's ability to report or withhold, the final regulations clarify that an FFI may enter into an FFI agreement if it can meet the requirements of § 1.1471–4(i). The final regulations require, however, that if foreign law prohibits a participating FFI from fulfilling its withholding obligations with respect to an account, the participating FFI must close the account within a reasonable time or, if local law prohibits closing the account, the participating FFI must block or transfer the account. Similarly, if a participating FFI is prohibited by foreign law, absent a waiver, from reporting information on an account that it must treat as a U.S. account, the final regulations provide that the participating FFI must request a waiver of foreign law from such account holder and if such waiver is not obtained within a reasonable period of time, the participating FFI must close or transfer such account.

VI. Comments and Changes to § 1.1471–5—Definitions Applicable to Section 1471

A. U.S. Account

Comments requested additional exceptions from the definition of U.S. account for low-value accounts other than preexisting accounts and the depository account exception provided by section 1471(d)(1)(B). In response to these comments, the Treasury Department and the IRS have provided a $50,000 exception for cash value insurance contracts by amending the definition of financial account, discussed below.

B. Account Holder

Comments requested clarification of whether an entity that is disregarded as an entity separate from its owner under § 301.7701–2(c)(2)(i) (disregarded entity)

is treated as an account holder. In response to these comments, because the definition of person excludes a disregarded entity, the final regulations clarify that an account held by a disregarded entity shall be treated as held by the person owning such entity.

Comments expressed concern regarding the identification of the account holder of insurance and annuity contracts. The final regulations provide that an insurance or annuity contract that is a financial account is treated as held by each person that can access the contract value (for example, through a loan, withdrawal, or surrender) or change a beneficiary under the contract. If no person can access the contract value or change a beneficiary under the contract, then the contract is treated as held by both the person(s) named in the contract as the owner(s) of the contract and each beneficiary under the contract. When the obligation to pay any benefit under the contract becomes fixed, the person entitled to such benefit is treated as a holder of the contract.

C. Financial Accounts

1. Depository Accounts

In response to comments, the final regulations limit the scope of the term depository account in a number of ways. For example, the final regulations exclude certain escrow accounts established for commercial transactions from treatment as financial accounts. The final regulations also exclude negotiable debt instruments that are traded on a regulated market or over-the-counter market and distributed through financial institutions. In response to comments, the final regulations also clarify the meaning of ''any other similar instrument'' in the definition of a depository account. The final regulations limit the scope of a depository account to an account for the placing of money (as opposed to the holding of property) in the custody of an entity engaged in a banking or similar business. The final regulations also clarify that a credit balance with respect to a credit card account issued by a credit card company is a depository account.

Comments requested guidance regarding the specific circumstances in which an amount held by an insurance company would be treated as a depository account. The final regulations provide that a depository account includes an amount that an insurance company holds under a guaranteed investment contract or under a similar agreement to pay or credit interest thereon. The final regulations also provide that a depository account does not include an advance premium or premium deposit received by an insurance company, provided the prepayment or deposit relates to an insurance contract for which the premium is payable annually and the amount of the prepayment or deposit does not exceed the annual premium for the contract. Such amounts are also excluded from cash value for purposes of determining whether a contract is a cash value insurance contract.

2. Equity and Debt Interests

With regard to equity or debt interests in investment entities, the final regulations revise the financial account definition to correspond to the changes discussed below to the definition of FFI for investment entities. Accordingly, the final regulations generally remove from the financial account definition debt or equity interests in investment entities that are described solely in § 1.1471–5(e)(4)(i)(A), which are generally investment advisors or asset managers. This treatment parallels the treatment of equity and debt interests in entities that act solely as depository institutions or custodial institutions.

Comments requested that bank holding companies should be treated like depository institutions for purposes of the financial account exclusion for non-regularly traded debt and equity interests to cover cases in which the holding company raises funds for its subsidiaries. Comments noted that these interests are often held through custodial institutions that are in a better position to document the holders and report and withhold on such instruments. The final regulations respond to these comments by generally removing from the definition of financial account debt or equity interests in holding companies and treasury centers of expanded affiliate groups whose aggregate income is derived primarily from active NFFEs, depository institutions, custodial institutions, and insurance companies.

Nevertheless, the final regulations limit the exception from financial account for a debt or equity interest in a holding company or a treasury center so that the exception does not apply in cases in which the debt or equity interest tracks the performance of one or more investment entities described in paragraph § 1.1471–5(e)(4)(i)(B) or (C) (generally traders and investment vehicles) or one or more passive NFFEs that are members of entity's expanded affiliated group rather than of the group as a whole. The final regulations also provide anti-abuse rules if the value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments, or the interest is issued with a principal purpose of avoiding the reporting or withholding requirements of chapter 4.

The proposed regulations provided that an equity or debt interest in certain types of financial institutions would be treated as a financial account only if the value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments. Comments requested additional guidance regarding when an equity or debt interest would be considered to be determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments. The final regulations provide that the value of an interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if the amount payable upon redemption of the interest is either secured or determined primarily by reference to assets that give rise to withholdable payments. The value of a debt interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if the debt is convertible into stock of a U.S. person, amounts payable as interest or upon redemption of the debt are determined primarily by reference to profits or assets of a U.S person, or the debt is secured by assets of a U.S. person.

A number of comments were received regarding the exception from financial account status for debt and equity that is regularly traded on an established securities market. The final regulations respond to comments by adopting the definitions provided in the final regulations under section 1472, including the revisions made to those regulations that provide a special rule for the initial year of public offering. The final regulations also clarify that an interest is not regularly traded if the holder of the interest (other than a financial institution acting as an intermediary) is registered on the books of the investment entity. This rule does not apply to the extent a holder's interest is registered prior to January 1, 2014, on the books of the investment entity. The proposed regulations excluded debt or equity interests in an investment entity that are regularly traded because such interests are typically held through other financial institutions, so that reporting by the issuing entity is not necessary to fulfill the purposes of chapter 4. Where that is not the case, the final regulations clarify

that such interests are treated as financial accounts. See § 1.1471–3(c)(9)(iii), however, for when the entity may rely upon a certification from broker acting as an agent of a payee (including receiving of payments on behalf of the payee from the entity).

3. Accounts Held by Estates

With regard to accounts held by estates, in response to comments, the final regulations conformed the chapter 4 rules with the reporting rules under section 6038D by excepting accounts held by estates from the definition of financial account.

4. Insurance Definitions and Contracts

Comments requested that the definitions of ''annuity contract,'' ''life insurance contract,'' and ''insurance company'' in the proposed regulation be modified to eliminate the need for foreign companies to become proficient in the specialized definitions of these terms under U.S. tax rules defining these products and to accommodate local law definitions and practices. In response to comments, the final regulations replace the references to U.S. tax law rules when defining these terms with plain language definitions and incorporate, where appropriate, references to local law definitions and practices.

Comments also requested that the final regulations clarify when an insurance company is a financial institution or a NFFE, because an insurance company's reserve activities could cause an insurance company that is not a specified insurance company to qualify as a depository institution, custodial institution, or investment entity. In response to these comments, the final regulations clarify that: (1) an insurance company that is not a specified insurance company must independently determine whether it is a depository institution, custodial institution, or investment entity; (2) an insurance company's reserve activities with respect to its insurance contracts and annuity contracts are not taken into consideration in determining whether the company is a depository institution, custodial institution, or investment entity; and (3) an insurance company that is not a financial institution is a NFFE.

The final regulations also respond to comments by expanding the exclusion from financial account status for certain term life insurance contracts. Because mortality risk under an insurance contract increases as the insured ages, the final regulations permit increasing periodic premium payments. To prevent front loading premiums, however, the final regulations require that the premiums be payable at least annually during the period the contract is in existence or until the insured attains age 90, and that the premiums do not decrease over time.

In addition, the Treasury Department and the IRS did not accept comments requesting that return of premium be permitted to the extent that it did not exceed the aggregate premiums paid for the contract, without regard to mortality, morbidity, and expense charges. The Treasury Department and the IRS believe such instruments implicate the policy objectives of chapter 4. Accordingly, under the final regulations, if a policyholder at the beginning of January purchases a term life insurance contract with a $100,000 annual premium, terminates the contract on April 1st, and upon termination receives $75,000 as a return of the premium paid ($100,000 less $25,000 mortality, morbidity, and expense charges for the period the contract was in force), then the contract qualifies for the term contract exclusion from a cash value insurance contract. If, however, upon termination, the policyholder would receive an amount exceeding $75,000, the contract would not qualify for exclusion from financial account status as a term life insurance contract.

Comments requested an exemption from financial account status for immediate pension or disability annuities that relate to exempt retirement or pension accounts. The final regulations respond to this comment by providing that a financial account does not include a non-investment linked, non-transferable, immediate annuity purchased by the accountholder in connection with an exempt retirement or pension account.

In response to comments requesting an expansion of the contracts that are exempt from financial account status, the final regulations made a number of revisions to the rules associated with cash value insurance contracts. The final regulations provide that an insurance contract is excluded from the definition of a financial account unless it has a cash value that exceeds $50,000 at any time during the calendar year, unless the participating FFI elects to report all contracts with a cash value. In addition, the final regulations exclude indemnity reinsurance contracts between two insurance companies from the definition of a cash value insurance contract and expand the exclusions from cash value to include a refund of premium upon the termination of a contract.

5. Exception for Certain Savings Accounts

Numerous comments were received requesting that the proposed regulation's exceptions from financial account status for certain savings accounts be expanded to accommodate savings vehicles commonly used in a number of jurisdictions. In response to these comments, substantial revisions were made to the exceptions in order to accommodate more savings vehicles without significantly increasing the ability for U.S. persons to use such vehicles to avoid chapter 4 reporting. For retirement and pension accounts, the excepted category is revised to eliminate the requirements that all contributions to the account be government, employer, or employee contributions and that the contributions be limited to earned income. In addition, the limitation on contributions is liberalized to allow plans that either have an annual contribution limit of $50,000 or less or a maximum lifetime contribution limit of $1,000,000 or less. The final regulations also add the condition that the relevant tax authorities require information reporting with respect to the account. For non-retirement savings accounts, the final regulations eliminate the requirement that contributions be limited by reference to earned income and instead require that the account be tax favored. The final regulations expand the definition of ''tax favored'' provided in the proposed regulations for purposes of these rules.

6. Account Balance or Value

The proposed regulations did not provide express guidance on the manner in which debt interests should be valued. The final regulations revise the definition of account balance or value with respect to a debt interest to mean the principal amount of such debt.

Comments noted that certain insurance companies value insurance and annuity contracts on the contract's anniversary date under normal business practices. In response to these comments, the final regulations allow the annual reporting of account balance or value of an insurance or annuity contract to be based upon either the account value at calendar year end or the account value at each contract anniversary date. Also, the final regulations provide that in the case of an annuity contract for which no value is reported to the account holder, the annuity is valued using the discount interest rate and mortality tables that are either (1) prescribed under section 7520 and the regulations thereunder, or (2)

used by the FFI to determine the amounts payable under the contract.

7. Maintaining a Financial Account

The Treasury Department and the IRS received comments that the proposed regulations could be read to provide that a single account could be maintained by multiple entities (such as both a collective investment vehicle and its transfer agent), thereby creating multiple documentation, reporting, or withholding obligations for each entity. In response to these comments, the final regulations identify the entity that will be treated as maintaining a financial account in order to avoid requiring multiple entities to document, withhold, and report with respect to a financial account.

D. Foreign Financial Institution

In response to comments requesting conformity between IGA definitions and the chapter 4 definitions, the final regulations amend the definition of FFI to provide that IGAs determine whether a resident entity described in the applicable IGA is an FFI. A corresponding change was made to the definition of NFFE. The statutory and regulatory definitions apply for entities that are not resident in IGA jurisdictions.

E. Financial Institution

1. Depository Institution

With regard to the definition of a depository institution, the Treasury Department and the IRS received a number of comments regarding whether merely accepting deposits was or should be sufficient to create depository institution status. In response to these comments, the final regulations clarify that accepting deposits is necessary but not sufficient to create depository entity status. Therefore, an entity that accepts deposits must also engage in one or more of the enumerated banking or financing activities (adapted from section 864's and section 954(f)'s active banking, financing, and similar business rules). The final regulations also provide that, to be treated as a depository institution, an entity needs to engage on a regular basis in one or more such activities. In addition, the final regulations clarify that an entity that completes money transfers by instructing agents to transmit funds is not in a banking or similar business because it does not accept deposits or other similar temporary investments of funds. The final regulations also clarify that an entity that solely accepts deposits from persons as collateral or security pursuant to a lease, loan, or similar financing arrangement is not a depository institution. This exception is intended to exclude from FFI status entities such as finance companies that do not fund their operations through deposits and entities acting as networks for credit card banks that hold cash collateral from such banks.

2. Custodial Institution

With regard to the definition of a custodial institution, the proposed regulations define custodial institutions by reference to whether over 20 percent of an entity's income is ''attributable to the holding of financial assets.'' In response to comments, the final regulations clarify the specific types of income that will be treated as attributable to holding financial assets.

In addition, in response to comments that new institutions (starts-ups) cannot qualify as custodial institutions, the final regulations provide a special rule for start-up entities that bases custodial institution status on the expectations and purposes of the entity.

3. Investment Entity

Comments requested that the definition of ''financial institution'' be clarified and more narrowly defined to exclude passive, non-commercial investment vehicles, including trusts. The IGAs adopt this approach by requiring an investment entity to undertake activity on behalf of customers. The IGAs also expand the definition of an investment entity to include an entity that provides certain financial services to customers, such as individual or collective portfolio management or otherwise investing, administering, or managing funds or money on behalf of other persons, regardless of whether the entity holds financial assets.

Taking into consideration comments that the provisions of the final regulations should conform as closely as possible to the provisions of the IGAs, the final regulations generally incorporate the definition of investment entity contained in the IGAs by providing that an investment entity includes any entity that primarily conducts as a business on behalf of customers: (1) trading in an enumerated list of financial instruments; (2) individual or collective portfolio management; or (3) otherwise investing, administering, or managing funds, money, or certain financial assets on behalf of other persons. In addition, the final regulations limit the scope of the proposed regulations' definition of investment entity by treating an entity (other than an entity that primarily conducts as a business on behalf of customers one of the activities enumerated in the preceding sentence) the gross income of which is primarily attributable to investing, reinvesting, or trading as an investment entity only if the entity is managed by a depository institution, a custodial institution, another investment entity, or an insurance company that qualifies as a financial institution. Accordingly, passive entities that are not professionally managed are generally treated as passive NFFEs rather than as FFIs. However, entities that function or hold themselves out as mutual funds, hedge funds, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets are investment entities.

Consistent with the approach of the proposed regulations, the final regulations provide that an entity primarily conducts an activity as a business if gross income attributable to such activity equals or exceeds 50 percent of the entity's gross income.

4. Insurance Companies and Holding Companies

With regard to insurance companies and holding companies of insurance companies, the final regulations provide that a holding company that is a member of an expanded affiliated group that includes an insurance company will be treated as an FFI if it issues or is obligated to make payments with respect to a cash value insurance contract or annuity contract, regardless of whether it would otherwise be treated as an FFI.

5. Certain Holding Companies and Treasury Centers

Comments noted that under many circumstances a company within an affiliated group of companies that serves as a holding company or provides treasury services for or on behalf of group members should not be considered a financial institution under chapter 4. In response to these comments, the final regulations limit the circumstances under which a holding company or treasury center is treated as a financial institution. Under the final regulations, such entities are FFIs in two situations. First, subject to limited exceptions for nonfinancial groups, discussed below, such entities are FFIs if they are part of an expanded affiliated group that includes a depository institution, custodial institution, insurance company, or investment entity described in paragraph (e)(4)(i)(B) and (C) (not exclusively a financial service provider). Second, they are FFIs regardless of

whether they are a member of a nonfinancial group if they are formed in connection with or availed of by a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets. These rules help to ensure that holding companies and treasury centers cannot be used by financial groups with nonparticipating FFIs or limited FFIs to shelter payments from chapter 4 withholding.

6. Exceptions to FFI Status

The Treasury Department and the IRS received a number of comments requesting more comprehensive exceptions to FFI status for holding companies and similar entities. Comments noted instances in which holding companies and other financial entities were part of a nonfinancial group, the activities of these entities were in furtherance of the nonfinancial business of the group, and the entities provided no meaningful investment opportunities to third-parties. In response to these comments, the final regulations provide more comprehensive exceptions to FFI status for certain nonfinancial group entities as described below. These entities are also excepted NFFEs for purposes of section 1472.

In particular, the final regulations provide an exception to FFI status (and passive NFFE status for section 1472 purposes) for holding companies, treasury centers, and captive finance companies that are part of a nonfinancial group. In response to comments, excepted holding companies may be part of nonfinancial group structures that include tiers of holding companies. Nonfinancial groups are permitted to include FFI members to a limited extent when all such members are participating FFIs or deemed-compliant FFIs. In response to comments, the final regulations also provide that an excepted entity can provide a mixture of holding company, treasury center, and captive finance company functions so long as substantially all of its activities are such activities. The final regulations also provide that this excepted status does not apply to entities formed in connection with or availed of by private equity funds and similar arrangements.

The final regulations also create a new exception to FFI status for excepted inter-affiliate FFIs. Comments noted that financial groups may include dormant entities, entities that were formed for a specific deal and were not subsequently liquidated, or entities formed for regulatory purposes whose activities are entirely within the financial group. In response to these comments, the final regulations provide that an entity that is a member of a PFFI group is not an FFI if it: (1) does not maintain financial accounts (other than accounts maintained for members of its expanded affiliated group); (2) does not hold an account with or receive payments from any withholding agent other than a member of its expanded affiliated group; (3) does not make withholdable payments to any person other than to members of its expanded affiliated group that are not limited FFIs or limited branches; and (4) has not agreed to report under § 1.1471–4(d)(1)(ii) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

In response to comments, the final regulations also provide an exception for an entity that is changing its line or business, provided that the entity previously qualified as an active NFFE.

With regard to entities described in section 501(c), the final regulations exclude insurance companies described in section 501(c)(15) from the section 501(c) exception from FFI status. Section 501(c)(15) insurance companies are for-profit insurance companies that qualify for the exemption from U.S. tax because they are small companies, but are not in any way restricted from maintaining financial accounts for specified U.S. persons. Therefore, these entities are not low-risk, so as to warrant an exemption from FFI status.

F. Deemed-Compliant FFIs

1. In General

The final regulations generally retain the same deemed-compliant categories that were included in the proposed regulations but have made several modifications and clarifications in response to comments received. In addition, the final regulations introduce new categories of deemed-compliant FFIs for certain credit card issuers, as described in § 1.1471–5(f)(1)(i)(E), sponsored FFIs, as described in § 1.1471–5(f)(2)(iii), and limited-life debt investment entities, as described in § 1.1471–5(f)(2)(iv). In response to comments, the deemed compliant category for retirement funds has been combined with the exempt beneficial owner category for a retirement fund in § 1.1471–6(f). Because a non-profit organization may be either an FFI or an NFFE, the category for non-profit organizations that are exempt from withholding under chapter 4 has been moved from the deemed-compliant FFI section to § 1.1471–5(e)(5), which describes entities that are excepted from treatment as financial institutions and are treated instead as excepted NFFEs. The proposed regulations indicated that the Treasury Department and the IRS were considering whether an additional deemed-compliant category should be created for insurance companies. In response to comments, the final regulations instead permit insurance companies to qualify as local FFIs and FFIs with only low-value accounts.

The Treasury Department and the IRS decline to adopt other recommendations to add to the categories of deemed-compliant FFIs to address jurisdiction-specific entities and arrangements and, instead, retain the proposed regulations' approach of using generally applicable attributes to define different categories of deemed compliant FFIs. Nevertheless, in the context of IGAs relating to the implementation of chapter 4, the Treasury Department will continue to identify entities that qualify as deemed-compliant FFIs on a jurisdiction-specific basis, and the final regulations treat those entities as deemed-compliant FFIs. In addition, the Treasury Department and the IRS have undertaken in other parts of these regulations to limit the number of entities that are subject to the chapter 4 rules. For example, as discussed herein, the category of exempt beneficial owners has been refined and expanded in response to comments and certain entities have been removed from the definition of FFI, either because they have neither customers nor assets relevant to the application of chapter 4 or because chapter 4's purposes are adequately served by treating such entities as NFFEs.

2. Registered Deemed-Compliant FFIs

a. Local FFIs

Comments requested that the final regulations expand the types of entities that qualify as local FFIs to include insurance companies, credit unions, and investment entities. The final regulations adopt these comments. The final regulations do not adopt comments that requested specific standards for an FFI to apply when determining whether it is regulated as a financial institution under the laws of its country of organization or incorporation. This requirement is intended merely to ensure that the government of incorporation or organization exercises some form of financial regulation over the FFI and, accordingly, is intended to be applied broadly.

The final regulations have amended the requirement that a local FFI not have a fixed place of business outside its country of incorporation or organization to permit an FFI to have a location in another jurisdiction, provided that location is not publicly advertised and performs solely administrative support functions (that is, back office functions). The Treasury Department and the IRS otherwise intend for the local FFI category to be available only to FFIs whose activities are limited to a single country. Accordingly, the Treasury Department and the IRS declined to adopt other comments suggesting that the presence and activities of the local FFI and its expanded affiliated group should not be limited to one country.

Comments pointed out that an FFI that services only the local population may advertise U.S. dollar denominated accounts for legitimate business reasons. In response to such comments, the final regulations eliminate the proposed regulations' prohibition against advertising U.S. dollar denominated deposit accounts or investments, provided that the FFI does not solicit customers or account holders outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it operates a Web site, provided that the Web site does not specifically indicate that the FFI maintains accounts for, or provides services to, nonresidents and does not otherwise target or solicit U.S. customers or account holders. Comments requested clarification as to whether an FFI would be considered to have solicited customers outside its country of incorporation or organization (the FFI's country) if it advertises through print, radio, or television that is distributed in multiple countries in addition to the FFI's country. The Treasury Department and the IRS have modified the regulations to indicate that an FFI whose print, radio, or television advertising is distributed outside the FFI's country is not considered to have solicited customers or account holder outside the FFI's country, provided the FFI's advertising is distributed or aired primarily within the FFI's country and the FFI does not advertise services or accounts for nonresidents and does not otherwise target or solicit U.S. customers or account holders.

In response to comments stating that many countries do not impose information reporting requirements on their financial institutions, the final regulations provide that an FFI may still qualify as a local FFI notwithstanding that its accounts are not subject to information reporting or withholding requirements if the AML due diligence requirements of the FFI's country require the FFI to identify whether its account holders are residents of the FFI's country.

Comments noted that many FFIs would fail to meet the 98 percent resident account holder threshold provided in § 1.1471–5(f)(1)(i)(A)(*5*), and requested that the Treasury Department and the IRS reduce the threshold. The local FFI exception is not intended to apply to FFIs that serve significant numbers of nonresident account holders. The 98 percent threshold is intended to provide limited flexibility in cases in which a financial institution otherwise qualifies as a local FFI but has a few nonresident account holders, for example because a prior resident has moved or taken a job in another country. Accordingly, the Treasury Department and the IRS have declined to reduce the 98 percent threshold necessary to qualify for the local FFI exception.

The final regulations have amended the resident test in § 1.1471–5(f)(1)(i)(A)(*5*) to require the resident threshold be applied based on account value instead of the number of accounts. In addition, to accommodate territories and administrative regions that primarily service their mainland populations, the resident threshold has been modified to permit the FFI to apply the test based on residents or citizens rather than solely based on residents, as provided in the proposed regulations.

Comments have also addressed the provision in the proposed regulations that required each member of the FFI's expanded affiliated group to qualify as a local FFI in order for any member of the group to qualify as a local FFI, and have noted that this requirement did not permit the group to have members that were NFFEs or other types of FFIs. The final regulations continue to provide that in order for an FFI to qualify as a local FFI, any FFI member of the expanded affiliated group should also be a local FFI in the same country, but provide an exception for members of the expanded affiliated group that are NFFEs or retirements funds described under § 1.1471–6(f).

The final regulations also add as a condition of local FFI status a requirement that the FFI not have policies or practices that discriminate against opening or maintaining accounts for U.S. individuals that are resident in the local FFI's country.

The Treasury Department and the IRS declined to adopt a number of other comments requesting changes to the local FFI registered deemed compliant criteria. The Treasury Department and the IRS believe that the final regulations strike the appropriate balance between ensuring that only entities that are low-risk or otherwise not necessary to carry out the purposes of chapter 4 are given deemed-compliant status and providing rules that have application across a number of jurisdictions and legal and regulatory systems.

b. Nonreporting Members of PFFI Groups

The final regulations retain the same requirements for a nonreporting member of a PFFI group that were provided in the proposed regulations except that the final regulations, in response to comments, conform this deemed-compliant category with other categories by allowing a nonreporting member of a PFFI group to close a U.S. account or an account of a nonparticipating FFI.

c. Qualified Collective Investment Vehicles

The final regulations retain the deemed-compliant category for qualified collective investment vehicles. The primary purpose of this deemed-compliant category is to provide relief for investment entities that are owned solely through participating FFIs or directly by large institutional investors, payments to which would not be subject to withholding or reporting under chapter 4. For this reason, the Treasury Department and the IRS have generally declined to adopt comments that request an expansion of the types of investors permitted in a qualified collective investment vehicle except that the final regulations permit investors that are retirement plans and nonprofit organizations. An investment entity that has other types of investors may be able to qualify as a deemed-compliant FFI if it meets the requirements under § 1.1471–5(f)(1)(i)(D) to be a restricted fund.

Comments suggested that an investment entity that is not regulated as an investment fund by its country of incorporation or organization should be considered regulated as an investment fund if it is regulated by the country in which it operates or if its fund manager is regulated with respect to the investment entity. The final regulations adopt this suggestion and expand the cases in which an investment entity will be considered to be regulated to include cases in which the investment entity is regulated in all of the countries in which it is registered and all countries

in which it operates, or the investment entity's manager is regulated with respect to the investment entity in all countries in which the investment entity is registered and all countries in which the investment entity operates.

Comments requested that a collective investment vehicle be eligible for deemed-compliant status notwithstanding that the vehicle previously issued bearer shares which remain outstanding if the vehicle discontinues issuing such shares. In response to these comments, the final regulations permit a qualified collective investment vehicle to have outstanding bearer obligations that were issued prior to January 1, 2013, if the qualified collective investment vehicle identifies the status of the holder prior to payment, no shares are issued in bearer form, including reissuances of surrendered shares, after December 31, 2012, and certain other conditions are met.

d. Restricted Funds

As with qualified collective investment funds, comments suggested that a fund may not always be regulated by its country of incorporation or organization but should be considered regulated if it is regulated by the country in which it operates or if its fund manager is regulated with respect to the fund. The final regulations adopt this suggestion and expand the methods under which a fund will be considered to be regulated to include cases in which the fund is regulated in all of the countries in which it is registered and all countries in which it operates, or the fund's manager is regulated with respect to the investment entity in all countries in which the investment entity is registered and all countries in which the investment entity operates.

Several comments indicated confusion regarding the requirement that all interests in the fund must be sold through identified distributors or redeemed directly by the fund. The final regulations clarify that interests in the fund may be issued by the fund directly if the investor can only dispose of those interests by having them redeemed or transferred by the fund, and not by selling them on a secondary market. Further, the regulations clarify that interests in the restricted fund can only be issued directly by the fund or by designated distributors described in § 1.1471–5(f)(1)(i)(D)(*3*). Finally, the regulations clarify that interests in an investment fund that are issued through a transfer agent or a distributor that does not hold the interests as a nominee of the account holder are considered issued directly by the fund.

Because the restricted fund category was created to provide relief for foreign funds that only target foreign investors, the Treasury Department and the IRS declined to adopt comments requesting that the restricted fund category be expanded to permit U.S. distributors. However, in response to requests that the restricted fund distributor provisions include foreign branches of U.S. financial institutions in the list of acceptable distributors described in § 1.1471–5(f)(1)(i)(D)(*3*), the final regulations modify the definition of a participating FFI to include a qualified intermediary (''QI'') branch of a U.S. financial institution. In addition, since a foreign branch of a U.S. financial institution that is a reporting Model 1 FFI is a registered deemed-compliant FFI, such foreign branch will also satisfy the distributor requirements of § 1.1471–5(f)(1)(i)(D)(*3*).

In response to comments that the renegotiation of distribution agreements will take a substantial amount of time and requests that a restricted fund be provided an additional year in order to renegotiate its distribution agreements to include the prohibitions required under § 1.1471–5(f)(1)(i)(D), the Treasury Department and the IRS are providing investment funds until the later of June 30, 2014, or six months after the date the investment fund registers with the IRS as a registered deemed-compliant FFI to renegotiate its debt and equity interest distribution agreements to comply with § 1.1471–5(f)(1)(i)(D)(*4*) and (*5*). The Treasury Department and the IRS are also modifying the sales restrictions of § 1.1471–5(f)(1)(i)(D)(*4*) to restrict sales only to specified U.S. persons, rather than all U.S. persons as was provided in the proposed regulations.

The Treasury Department and the IRS did not adopt comments requesting that the prohibition on sales to U.S. persons be limited only to sales to U.S. residents because such change would be inconsistent with the policy objectives of chapter 4. The Treasury Department and the IRS also declined to remove the requirement that a restricted fund acquire or redeem all debt and equity interests that were issued through a distributor that ceases to be a qualifying distributor within six months of the distributor's change in status, but have modified the requirement to permit such interests to be transferred to another distributor described in § 1.1471–5(f)(1)(i)(D)(*3*).

Comments also requested that a restricted fund be permitted to have preexisting direct accounts that were issued in bearer form before January 1, 2013, if the fund performs the required account identification procedures when the bearer certificate is presented for payment. In response, the final regulations permit a restricted fund to have outstanding bearer obligations that were issued prior to January 1, 2013, if the restricted fund identifies the status of the holder prior to payment, no shares are issued in bearer form, including reissuances of surrendered shares, after December 31, 2012, and certain other conditions are met.

e. Qualified Credit Card Issuers

The Treasury Department and the IRS have received comments requesting a deemed-compliant category for credit card issuers that accept deposits associated with the credit card. In response to these comments, the Treasury Department and the IRS are adding a new category of registered deemed-compliant FFIs to the final regulations for credit card issuers that agree to prevent a customer from having a deposit with the credit card issuer in excess of $50,000.

f. Registered Deemed-Compliant Procedural Requirements

Comments requested that the qualified collective investment vehicle rules provide a cure period in the case of noncompliance that occurs following the FFI's registration with the IRS (including a change of status by the FFI's interest holders that results in disqualification as a qualified collective investment vehicle). The final regulations provide a registered deemed-compliant FFI with six months from the time it becomes ineligible for the registered deemed-compliant status to cure the default or notify the IRS of its change in status.

g. Sponsored FFIs

Comments noted that in many cases it may be preferable for a trustee or fund manager to perform the due diligence and reporting for all of the FFIs which it manages on a consolidated basis. Comments also noted that a number of U.S. financial institutions have systems in place to perform all due diligence, withholding, and reporting obligations of its controlled foreign corporation subsidiaries for U.S. tax purposes. In response to these comments, the final regulations create a registered deemed compliant FFI category for sponsored FFIs for which a sponsoring entity agrees to perform all due diligence, withholding, reporting, and other requirements the sponsored FFI would have been required to perform if it were a participating FFI, and complies with certain other requirements.

3. Certified Deemed-Compliant FFIs

a. Nonregistering Local Banks

In response to comments requesting a simplification of the definition of a bank for purposes of the nonregistering local bank category, the final regulations do not include a cross reference to section 581 and have clarified that, in addition to banks, certain credit unions or similar organizations may also qualify as nonregistering local banks. The final regulations amend the requirements applicable to a nonregistering local bank to conform with the changes made to the local FFI registered deemed-compliant category described above.

Because the nonregistering local bank category was intended to apply only to very small FFIs, the Treasury Department and the IRS declined to adopt comments requesting that the threshold for total assets of the FFI be raised above $175 million for the FFI and $500 million for the FFI's expanded affiliated group.

b. Sponsored, Closely Held Investment Vehicles

The final regulations also create a certified deemed-compliant category for sponsored, closely held investment vehicles, which are sponsored by a sponsoring FFI in the same manner as the registered deemed-compliant category.

c. Limited Life Debt Investment Entities

The Treasury Department and the IRS received comments stating that certain investment vehicles will be unable to comply with the registration and due diligence requirements in the regulations, thus necessitating a deemed-compliant category for such entities. In particular, comments have noted that vehicles that have a fixed lifespan and that were created for the purpose in investing in a limited type of debt obligation with the intent to hold such obligations until maturity or until the liquidation of the vehicle will often provide the trustee of the vehicle with limited authority to act in manner not specifically provided for under the agreement. In most cases, the trustee would not be permitted to register the vehicle as a participating FFI or comply with the due diligence requirements of a participating FFI unless the trust indenture requires the trustee to do so, the trustee is required to do so under a provision of law, or all of the investors in the vehicle agree to amend the trust agreement to provide the trustee with the power to act in such a manner. In order to provide time to address these limitations, the final regulations permit these entities to qualify as deemed-compliant FFIs for a limited period of time. After December 31, 2016, the deemed-compliant status of these entities terminates, and each such entity will be required to comply with the terms of any applicable IGA or otherwise register as a participating FFI.

4. Owner-Documented FFIs

Comments stated that the $50,000 debt limit on owner-documented FFIs was too restrictive for common business practices of many small FFIs and requested that such entities be allowed to have unlimited debt interests provided the FFI identify and pass up to the withholding agent the chapter 4 status of all debt holders. In response to these comments, the final regulations no longer prohibit owner-documented FFIs from issuing debt interests that constitute financial accounts in excess of $50,000 to persons other than nonparticipating FFIs, provided that the owner-documented FFI reports all individuals and specified U.S. persons that directly or indirectly hold such interests (other than persons that hold such interests through a participating FFI, registered deemed-compliant FFI, certified deemed-compliant FFI, U.S. person, exempt beneficial owner, or excepted NFFE) to the designated withholding agent.

5. Restricted Distributors

Comments requested that § 1.1471–5(f)(4) be amended to permit a participating FFI to treat a distributor as a restricted distributor. The Treasury Department and the IRS agree that permitting a participating FFI that holds an interest in a restricted fund as a nominee to use a restricted distributor to distribute that interest fulfills the same purpose as permitting the restricted fund to use a restricted distributor. For this reason, the final regulations have been amended to permit a participating FFI to use a restricted distributor to distribute interests in a restricted fund that the participating FFI holds as a nominee.

G. Recalcitrant Account Holders

The final regulations expand the definition of recalcitrant account holder to include an account holder that is documented as an NFFE (other than a WP or WT) but that fails to provide the information required under § 1.1471–3(d) regarding its owners.

The final regulations also revise the start of recalcitrant account holder status to coordinate with a participating FFI's withholding requirements. The final regulations require a participating FFI or deemed-compliant FFI to treat an account other than preexisting account or an account (including preexisting account) that undergoes a change in circumstances as held by a recalcitrant account holder beginning on the earlier of the date a withholdable payment or foreign passthru payment is made to the account or the date that is 90 days after account opening or the change in circumstances.

The proposed regulations did not coordinate recalcitrant account holder status under chapter 4 with the chapter 61 backup withholding procedures for cases in which a participating FFI receives a notice from the IRS regarding a name and TIN mismatch for an account holder. The final regulations clarify that an account for which the participating FFI or deemed-compliant FFI receives a notice from the IRS indicating that the name and TIN combination provided for the account holder is incorrect will be treated as a recalcitrant account holder following the date of such notice if the account holder does not provide a correct name and TIN combination within the time prescribed in § 31.3406(d)–5(a). The IRS intends to provide a process similar to the ''B Notice'' process of chapter 61 to notify an FFI of a name/TIN mismatch for an account holder of a U.S. account that was reported under § 1.1471–4(d). Under § 31.3406(d)–5(a), a payor that receives a ''B Notice'' for a payee is required to start backup withholding and reporting reportable payments made to such payee on or before the 30th business day after the receipt of the ''B Notice.'' Similarly, a participating FFI or deemed-compliant FFI is required to treat an account holder for which it receives a notice indicating a name/TIN mismatch as a recalcitrant account holder (and withhold and report to the extent required) on or before the 30th business day after the FFI receives such notice.

H. Expanded Affiliated Group

Proposed § 1.1471–5(i) defined an expanded affiliated group for purposes of chapter 4. The final regulations make two material changes to the proposed regulations.

First, some comments requested an exclusion from membership in an expanded affiliated group for entities formed through seed capital investments by another group member. These comments described a seed capital investment as an initial capital contribution made to an investment entity by an entity related to the manager of the investment entity for purposes of establishing a performance record before selling interests in the entity to unrelated investors or for purposes otherwise deemed appropriate

by the manager. In support of this exclusion, comments noted the burden of monitoring ownership changes in the investment entity for determining when to exclude the entity as a member of such a group, including the potential updating required for purposes of the group's FFI application with the IRS. In response to these comments, the final regulations modify the definition of expanded affiliated group to exclude from the group an investment entity owned by an FFI group member when the member's ownership exists solely to provide a seed capital investment in an entity. The final regulations describe the circumstances in which an investment qualifies for this treatment (including by defining seed capital) and prescribe a three-year period in which the investment entity is excluded from the group.

Second, the final regulations incorporate an anti-abuse rule that disregards a change in ownership, voting rights, or the form of an entity with respect to an expanded affiliated group if the change is pursuant to a plan a principal purpose of which is to avoid withholding or reporting obligations under chapter 4.

VII. Comments and Changes to Section 1.1471–6—Payments Beneficially Owned by Exempt Beneficial Owners

Proposed § 1.1471–6 defined classes of entities that qualify as exempt beneficial owners for purposes of chapter 4. The final regulations expand the circumstances in which certain classes of entities qualify as exempt beneficial owners and modify when an entity qualifies as an exempt beneficial owner under § 1.1471–6(g) (describing certain entities owned by only exempt beneficial owners). The final regulations also clarify that, except as provided in § 1.1471–6(f) (regarding retirement funds), an entity cannot qualify as an exempt beneficial owner unless it is the beneficial owner of the payment.

To coordinate the final regulations' identification of specific entities as exempt beneficial owners with the IGAs, the definition of an exempt beneficial owner is expanded to include any entity identified as an exempt beneficial owner pursuant to an IGA. This change is incorporated into the definition of an exempt beneficial owner in § 1.1471–1(b)(38).

Comments noted that limiting the definition of international organization to include only international organizations in which the United States participates as a member was unnecessary. In response to these comments, this definition has been expanded to allow an entity to qualify as an international organization if the entity: (1) is a supranational organization or intergovernmental organization recognized as an international organization under certain provisions of foreign law or that has in effect a headquarters agreement with a foreign government; and (2) prevents private inurement under the principles of § 1.1471–6(b)(3)(ii).

In response to comments, the final regulations broaden the classes of pension funds qualifying as exempt beneficial owners under § 1.1471–6(f) by including several new categories of pension funds, each of which applies without regard to whether the pension fund is the beneficial owner of income. Comments requested removal of the beneficial owner requirement because, depending on the jurisdiction, a fund may or may not be treated as the beneficial owner of income it receives under local law. Other comments were received regarding the interaction of the exemption for retirement plans in proposed § 1.1471–6(f) with those retirement plans afforded deemed compliant status in proposed § 1.1471–5(f)(2)(ii) (which did not require the plan to be the beneficial owner and which included certain plans with fewer than twenty participants). In response to these comments, § 1.1471–5(f)(2)(ii) was removed and the types of retirement plans that may qualify as exempt beneficial owners under § 1.1471–6(f) regardless of whether they are beneficial owners was expanded, as described below.

In response to comments, the final regulations treat a fund entitled to benefits under an income tax treaty and operated principally to administer or provide pension or retirement benefits as an exempt beneficial owner regardless of whether the fund is generally exempt from taxation in the country in which it is organized.

Regarding the general requirements for retirement funds included in proposed § 1.1471–6(f), comments noted that many plans would fail to qualify under the rule requiring that all contributions to the plan, except for rollover contributions from other retirement funds, come from employer or employee contributions. Comments suggested alternative requirements to prevent funds from being abused for chapter 4 purposes, including annual information reporting, strict limitations on withdrawals or distributions from the fund, or penalties for early distributions. Additionally, comments noted that certain types of mandatory government plans may also fail the requirement in proposed § 1.1471–6(f) that contributions be solely from employer or employee contributions. Comments also requested that funds that provide for disability or death benefits should not disqualify a retirement fund from being an exempt beneficial owner that would otherwise qualify under § 1.1471–6(f).

In response to these comments, the final regulations: (1) provide rules allowing for alternative sources of contributions apart from those from employers and employees; (2) provide anti-abuse provisions based on alternatives suggested in comments; and (3) allow, in appropriate circumstances, plans to provide disability or death benefits. In response to comments, the final regulations also broaden the treaty-qualified retirement fund category and add a new category for funds formed pursuant to pension plans that would meet the requirements of section 401(a), other than the requirement that the plan be funded by a trust created or organized in the United States.

Comments also questioned whether the proposed regulations intended to exclude certain pension funds established by exempt beneficial owners, noting that the regulations under section 892 specifically include an exemption for certain pension funds established by foreign governments. The Treasury Department and the IRS generally intend for these types of pension funds to qualify as exempt beneficial owners. To eliminate the possibility that such plans might not so qualify in appropriate cases, the final regulations provide that pension funds meeting certain requirements (relating to retirement, disability, or death benefits) will qualify as exempt beneficial owners when established by another exempt beneficial owner for its employees, employees' beneficiaries, or other persons providing services to such funds.

With respect to the allowance in proposed § 1.1471–6(g) providing exempt beneficial owner status to certain entities wholly owned by exempt beneficial owners, comments noted that this provision did not contemplate structures in which entities are owned directly by other entities that would qualify as exempt beneficial owners under § 1.1471–6(g). The final regulations are amended to clarify that exempt beneficial owner status under § 1.1471–6(g) applies in such cases. The final regulations also clarify that receiving loans from depository institutions or issuing debt to other exempt beneficial owners will not prevent an entity from qualifying as an exempt beneficial owner under § 1.1471–6(g).

The final regulations provide in § 1.1471–6(h) an exception to exempt beneficial owner status for foreign governments, international organizations, foreign central banks of issue, and the governments of U.S. territories that engage in certain commercial activities, replacing the prohibition in the proposed regulations on commercial activities that had applied only to foreign governments. Some comments noted that an entity would fail to qualify as an exempt beneficial owner under the commercial activities exception in the proposed regulations even when the entity accepts deposits or maintains financial accounts only for exempt beneficial owners (such as the members in an entity such as a development bank organized by certain foreign governments). The final regulations respond to these comments by providing a limitation on the commercial activities exception for activities for or on behalf of other exempt beneficial owners.

VIII. Section 1.1472–1—Withholding on NFFEs

The regulations under section 1472 provide rules applicable to withholding agents for withholding on certain NFFEs and reporting with respect to the substantial U.S. owners of certain NFFEs.

In response to comments requesting a transition period to accommodate the creation of associated systems, the final regulations provide that withholding agents are required to withhold under section 1472 only with respect to withholdable payments made after December 31, 2013. In addition, § 1.1472–1(b)(2) provides that withholding agents are not required to withhold under section 1472 on payments made before January 1, 2015, with respect to a preexisting obligation to a payee that is not a prima facie FFI and for which a withholding agent does not have documentation indicating the payee's status as a passive NFFE with one or more substantial U.S. owners.

The final regulations also clarify the interaction of section 1472 withholding with a participating FFI's withholding obligations under section 1471(b) and the associated regulations. Under the final regulations, a participating FFI that complies with its withholding obligations under § 1.1471–4(b) will be deemed to satisfy its obligations under section 1472 with respect to withholdable payments made to NFFEs that are account holders. Section 1472 will continue to apply to a participating FFI that acts as a withholding agent on a withholdable payment made to an NFFE that is not an account holder (for example, a payment with respect to a contract that does not constitute a financial account). These withholding obligations will be limited, however, by § 1.1473–1(a)(4)(vi), which provides a temporary exception from the definition of withholdable payment for certain payments of U.S. source FDAP income made prior to January 1, 2017, with respect to offshore obligations.

In response to comments, § 1.1472–1(c)(1)(i)(B) clarifies the application of the publicly traded rules for excepted NFFE status in the year of an initial public offering.

With regard to the exception from withholding for payments to active NFFEs, the Treasury Department and the IRS received comments requesting that passive income be defined by reference to section 954(c). This comment was not adopted. The Treasury Department and the IRS believe that providing a specific list of items constituting passive income will provide more certainty for withholding agents and NFFEs. The final regulations do, however, clarify the scope of passive income, including the rules regarding commodities. In addition, in response to comments, the final regulations expand the exceptions to passive income in a number of respects. First, the final regulations in § 1.1472–1(c)(1)(iv)(B) provide that passive income will not include dividends, interest, rents, and royalties received or accrued from a related person to the extent that they are properly allocable to income of the payor that is not passive income. Second, the final regulations provide an exception from passive income for certain income earned by dealers acting in the ordinary course of their trade or business.

In addition, the final regulations provide expanded categories of excepted NFFEs to address the treatment of holding companies and similar entities that are part of and that support a group conducting an active trade or business. The final regulations also clarify that an entity will not be an active NFFE unless less than 50 percent of its gross income is from passive income and less than 50 percent of its assets are passive assets (that is, assets that produce or are held for the production of passive income), on a weighted average basis.

Also, the requirements for reporting on substantial U.S. owners were moved to § 1.1474–1(i)(2) in the final regulations to include these requirements with the other reporting requirements applicable to withholding agents.

IX. Changes and Comments to § 1.1473–1—Section 1473 Definitions

A. Withholdable Payment

1. In General

Comments noted that U.S. mutual funds that invest in foreign securities will pay dividends that are withholdable payments and, correspondingly, that gross proceeds from the sale of interests in such U.S. funds would be withholdable payments. Those comments requested that the definition of withholdable payment be amended such that U.S. fund dividends would be characterized based on the assets held by the fund and would be subject to withholding only to the extent provided under the foreign passthru payment rules otherwise applicable to participating FFIs to avoid creating a competitive imbalance.

The final regulations provide temporary relief to U.S. stock and debt issuers, including U.S. funds, by delaying withholding on gross proceeds until 2017. Treasury and the IRS do not believe, however, that eliminating chapter 4 withholding on payments of dividends that constitute U.S. source FDAP income under chapter 3 advances the purposes of chapter 4. It is expected, however, that these issues will be alleviated in practice through the conclusion of IGAs.

Comments also requested that the rules defining withholdable payment exclude payments that are reported by the withholding agent on Form 5471 or 5472 in order to alleviate duplicative reporting. The final regulations do not adopt this comment because the chapter 4 withholding rules serve different purposes than the reporting regimes under sections 6038 and 6038A which underlie Forms 5471 and 5472.

2. Gross Proceeds

Comments noted that clearing organizations pay or credit a member's account with the net amount of sales or dispositions that occurred throughout a given period. The final regulations allow clearing organizations to determine gross proceeds based on the net amount paid or credited to a member's account under the settlement procedures of such organization.

In response to comments, the final regulations clarify that any contract that results in the payment of a dividend equivalent (as defined in section 871(m) and regulations thereunder) is treated as property of a type that can produce U.S. source FDAP income, including if such dividend equivalent is part of a termination payment.

The final regulations also modify the definition of gross proceeds to exclude

proceeds from transactions not subject to recognition under section 1058.

3. Exceptions to Withholdable Payment

a. Withholding on Offshore Payments of U.S. Source FDAP Income

To coordinate the final regulations' withholding requirements with those of the Model 1 IGAs, the final regulations delay withholding on certain offshore payments of U.S. source FDAP income until January 1, 2017. Specifically, the final regulations temporarily exclude from the definition of withholdable payment a payment of U.S. source FDAP income made with regard to an offshore obligation prior to January 1, 2017, by a person that is not acting as an intermediary with regard to the payment. For purposes of this exception, the final regulations expressly include a qualified securities lender as an intermediary. The final regulations also limit the application of this rule for certain flow-through entities.

b. Excluded Nonfinancial Payments

Comments requested clarification and expansion of the proposed regulations' ordinary course of business exception to withholdable payments. In particular, comments requested that the definition of ordinary course of business payments be modified by striking the word ''nonfinancial'' because it creates uncertainty as to whether services provided to a financial institution that are accounts payable type expenses are ordinary course of business payments. Comments also noted that the ordinary course of business exception imposed significant administrative burdens given the volume of cross-border payments that had to be identified and classified. In response to these comments, the final regulations replace the ordinary course of business exception with a more comprehensive exception for excluded nonfinancial payments. The revised exception provides greater certainty by explicitly describing payments that are excluded from withholdable payments and by providing a list of payments that are withholdable payments.

The proposed regulations also provided that the exclusion for ordinary course of business payments included payments for the sale of goods. Commentators pointed out that such an exception implied that the sale of goods could give rise to U.S. source FDAP income. The final regulations remove the reference to ''goods'' in the nonfinancial payments exclusion and define a payment of U.S. source FDAP income to expressly incorporate the exclusion under § 1.1441–2(b)(2)(i) (stating that certain gains from the sale of property do not constitute FDAP income).

4. Excise Tax under Section 4371

Under the proposed regulations, withholdable payments include insurance and reinsurance premiums that are U.S. source FDAP income. Comments requested that the final regulations exclude insurance and reinsurance premiums from the definition of withholdable payment to the extent the premiums are subject to the excise tax under section 4371. Such premiums are exempt under chapter 3, however, because the excise tax under section 4371 is an adequate substitute for tax on the business income of a foreign issuer. In contrast, withholding under chapter 4 is intended as an incentive to FFIs to become participating FFIs, rather than as a proxy for the tax on the income of the issuer. As a result, the policy reasons for the exclusion of such insurance and reinsurance premiums for purposes of chapter 3 withholding are not relevant for chapter 4 withholding. The final regulations therefore do not adopt this comment.

B. Substantial U.S. Owner

The final regulations include rules for determining whether a specified U.S. person is a substantial U.S. owner that remain substantially unchanged from the proposed regulations subject to the following modifications. The proposed regulations required that the determination of whether a person is a substantial U.S. owner be made by calculating such person's direct and indirect interest in the entity. The attribution rules under the proposed regulations required that a specified U.S person's indirect interest in an entity be determined by looking through interests held by entities that are U.S. persons. The final regulations do not require an entity to look through interests held by a U.S. person that is not a specified U.S. person when determining whether the entity has a substantial U.S. owner. The final regulations add a provision that requires an entity making a determination as to whether a specified U.S. person is a substantial U.S. owner to aggregate the interests owned by persons related to the specified U.S. person, applying certain provisions of the regulations under section 267 to determine whether such persons are related.

In response to comments regarding the difficulty of determining whether a specified U.S. person owns a sufficient interest in an entity to be a substantial U.S. owner, the final regulations provide a safe harbor that permits an entity, or a withholding agent with respect to the entity, to treat a specified U.S. person as a substantial U.S. owner in lieu of making the calculations necessary to determine whether such person holds a sufficient interest to be a substantial U.S. owner.

Comments requested that the 10 percent ownership threshold for determining a substantial U.S. owner be changed to 25 percent to align with AML due diligence requirements. These comments were not adopted. Jurisdictions have varying approaches to enforcing AML due diligence requirements, and thus, reliance on AML due diligence to determine substantial U.S. owners is more appropriate in the context of the IGAs.

C. Specified U.S. Person

The final regulations add section 457(g) plans and exempt trusts under section 403(b) to the classes of U.S. persons that are not specified U.S. persons.

X. Comments and Changes to § 1.1474–1—Liability for Withheld Tax and Withholding Agent Reporting

A. Use of Agents

The proposed regulations described the circumstances under which a withholding agent could appoint agents to fulfill its obligations under chapter 4 and the withholding agent's liability. Comments requested removal of the proposed regulations' restrictions on the use of sub-agents. The final regulations remove these restrictions and clarify that a withholding agent remains liable for the acts of both its agents and its agents' sub-agents. The final regulations also clarify that any agent or sub-agent that acts as a reporting agent for filing Form 1042 or making deposits and payments reportable on the form on behalf of a withholding agent must file a Form 8655, ''Reporting Agent Authorization,'' with the IRS.

B. Information Reporting

The proposed regulations set forth the information reporting requirements of a withholding agent paying a chapter 4 reportable amount and the transitional reporting requirements of a participating FFI or registered deemed-compliant FFI making a payment of a foreign reportable amount to a nonparticipating FFI. The proposed regulations also required financial institutions to file such returns electronically on magnetic media without regard to the general annual 250 return threshold applicable to withholding agents other than financial institutions.

The final regulations modify and clarify certain provisions of the proposed regulations with respect to these reporting requirements. The final regulations modify which persons are recipients for purposes of reporting chapter 4 reportable amounts and describe categories of recipients with respect to payments of U.S. source FDAP income. Due to the suspension of withholding on gross proceeds and foreign passthru payments until 2017, the definition of a recipient of a payment other than of U.S. source FDAP income is reserved. Information reporting is required with respect to a payment of gross proceeds only if the payment is an amount subject to withholding. In response to comments requesting clarification of the meaning of the term ''subject to withholding,'' the final regulations in § 1.1471–1(b)(118) define an amount subject to withholding as an amount withheld upon or required to be withheld upon under chapter 4. The final regulations also clarify that a chapter 4 reportable amount excludes an amount paid to a payee that the withholding agent treats as a U.S. person, but add a provision that an amount paid by a withholding agent to a participating FFI or registered deemed-compliant FFI is reportable to the extent allocable to U.S. persons identified in a pool of payees reported by the FFI (as described in paragraph (d)(4)). The final regulations also generally describe how a withholding agent reports with respect to payments made to a participating FFI or registered deemed-compliant FFI that acts as an intermediary or flow-through entity when the FFI provides pooled information to the withholding agent regarding its account holders and payees subject to withholding under chapter 4. In the case of payments that are not subject to withholding under chapter 4, the final regulations require reporting to the extent that reporting is required under § 1.1461–1.

Comments sought clarification on the reporting obligations of a participating FFI or registered deemed-compliant FFI that acts as an intermediary or is a flow-through entity. The final regulations provide that if a payment of U.S. source FDAP income is made by a U.S. withholding agent to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT that provides sufficient information to the withholding agent to withhold and report the payment, the FFI is not also required to report the payment. The final regulations clarify, however, that a participating FFI or registered deemed compliant FFI is required to complete Forms 1042–S by allocating the income and withholding paid to its recalcitrant account holder pools as described in § 1.1471–4(d)(6) (requiring a participating FFI to report the number of accounts and account balance information), and that such reporting is required regardless of whether the FFI made a payment of a chapter 4 reportable amount to each such account holder.

Comments were also received regarding transitional reporting by participating FFIs and deemed-compliant FFIs for foreign reportable amounts paid to nonparticipating FFIs. Suggestions included permitting aggregate, in lieu of specific, payee reporting; modifying the definition of foreign reportable amount; and eliminating the transitional reporting altogether. Because the transitional reporting provides relevant information concerning the extent of compliance by FFIs with the requirements of chapter 4 in the absence of withholding with respect to foreign passthru payments, however, these comments are not adopted in the final regulations. The final regulations otherwise clarify that reporting during the transitional period is required for aggregate payments paid *by* a participating FFI rather than *to a* participating FFI.

XI. Comments and Changes to §§ 1.1474–2 through –5—Refunds, Credits, and Reimbursement

Proposed §§ 1.1471–2 through –5 provide rules relating to the refund or credit of taxes withheld under chapter 4 and reimbursement procedures for withholding agents in cases of overwithholding. Comments requested the establishment of efficient procedures for beneficial owners to obtain refunds of tax withheld under chapter 4. In response to these comments, the final regulations provide the alternative allowance for participating FFIs and reporting Model 1 FFIs to obtain refunds on behalf of their account holders under the collective refund procedures of § 1.1471–4(h). To facilitate the provision of refunds in other appropriate cases, the final regulations include in § 1.1474–1(d) the allowance for a withholding agent to issue a specific Form 1042–S to an account holder subjected to withholding under chapter 4 (in lieu of the pooled reporting otherwise permitted) for purposes of substantiating withholding of amounts under chapter 4.

XII. Comments and Changes to § 1.1474–6—Coordination of Chapter 4 With Other Withholding Provisions

Proposed § 1.1474–6 provided rules for coordinating withholding under chapter 4 with other withholding provisions under the Code. The final regulations adopt the provisions of this section without substantial change, but add paragraph (b)(3) to permit a withholding agent to offset its obligation to withhold under chapter 4 with respect to payments of dividend equivalents under section 871(m) in a security lending or substantially similar transaction to the extent that another withholding agent has withheld under chapter 3 or 4 with respect to the same underlying security in such a transaction. This offset is permitted only when there is sufficient evidence that tax was actually withheld as determined under the provisions of chapter 3.

XIII. Comments and Changes to § 301.1474–1—Required Use of Magnetic Media for Financial Institutions Filing Form 1042–S or Form 8966

Proposed § 301.1474–1 requires that a financial institution file Forms 1042–S on magnetic media. The final regulations add a requirement that a financial institution also file Form 8966, ''FATCA Report,'' on magnetic media.

Procedural Matters

I. The FATCA Registration Portal

The FATCA Registration Portal (Portal) will be the primary means for financial institutions to interact with the IRS to complete and maintain their chapter 4 registrations, agreements, and certifications. The Portal will be accessible to financial institutions beginning no later than July 15, 2013. At that time, financial institutions will be able to register and, as appropriate, agree to comply with their obligations as participating FFIs or as sponsoring entities (as described in section 3 below), or to register and agree to act as limited FFIs or registered deemed-compliant FFIs (including reporting Model 1 FFIs, which are treated as registered deemed-compliant FFIs under the final regulations). The IRS will permit registration of FFIs that are reporting Model 1 FFIs or described as a Reporting Financial Institution under a Model 2 IGA so long as the associated jurisdiction is identified on a list published by the IRS of countries treated as having in effect an IGA, as appropriate, even if any necessary ratification of such IGA in the jurisdiction has not yet been completed.

Once a financial institution has registered, the IRS will approve its registration. The IRS intends, upon such approval, to issue a GIIN to each participating FFI and registered deemed-compliant FFI. These GIINs will be assigned beginning no later than October 15, 2013, and should be used as the institution's identifying number for satisfying its reporting requirements and identifying its status to withholding agents. The IRS will electronically post the first list (IRS FFI List) of participating FFIs and registered deemed-compliant FFIs (including reporting Model 1 FFIs) on December 2, 2013. The IRS intends to update the IRS FFI List on a monthly basis. The last date by which a financial institution can register with the IRS to ensure its inclusion on the December 2013 IRS FFI List is October 25, 2013.

A. The FFI Agreement

A financial institution registering through the Portal will agree to comply with the FATCA requirements pertaining to its particular situation. These requirements will vary depending on the financial institution's status in the jurisdictions in which it operates. For example, an FFI may be a resident of a jurisdiction for which it reports as a reporting Model 1 FFI and have other branches in jurisdictions covered by applicable Model 2 IGAs and branches in jurisdictions not covered by an IGA. In such case, the FFI will be able to register once and may enter into an FFI agreement on behalf of its branches that are not covered under an applicable Model 1 IGA. Accordingly, the FFI agreement will not relate to its operations as a reporting Model 1 FFI because those operations will be subject to the rules set out under the law of the applicable jurisdiction, but the FFI agreement will incorporate the requirements applicable to its operations in jurisdictions other than those covered under an applicable Model 1 IGA.

Before the Portal opens for registration, the Treasury Department and the IRS will publish a revenue procedure (FATCA Rev. Proc.) containing all the terms and conditions applicable to FFIs for chapter 4 purposes and for FFIs also assuming chapter 3 responsibilities (that is, as QIs, WPs, and WTs). The terms and conditions set forth in the FATCA Rev. Proc. applicable to FFIs for chapter 4 purposes will be fully consistent with the rules set forth in these final regulations. The terms and conditions set forth in the FATCA Rev. Proc. applicable to FFIs that are assuming or continuing chapter 3 responsibilities are discussed in more detail in I.C and D of this section.

B. Sponsored FFIs

As discussed in section VI.F above, the final regulations include three deemed-compliant categories for sponsored FFIs, under which a sponsoring entity agrees to register with the IRS and undertake all of the chapter 4 obligations of a participating FFI on behalf of one or more sponsored FFIs. Beginning no later than July 15, 2013, financial institutions will be able to register as sponsoring entities but will not at that time be required to provide information regarding their sponsored FFIs. It is anticipated that sponsoring entities will be able to provide sponsored FFI information and obtain GIINs for each sponsored FFI beginning no later than October 15, 2013.

If a sponsoring entity must also become a participating FFI or registered deemed-compliant FFI with respect to accounts that it maintains or register as a reporting Model 1 FFI, the sponsoring entity will be required to do so separately from its registration as a sponsoring entity. Such an FFI will obtain a separate GIIN to be used with respect to its own chapter 4 or FATCA Partner reporting requirements and to establish its own chapter 4 status to withholding agents.

C. Qualified Intermediaries

Beginning January 1, 2014, QIs will be required to assume chapter 4 responsibilities with respect to their accounts as a condition for maintaining QI status or for obtaining QI status. For this purpose, existing QI agreements will be modified to take into account the applicable chapter 4 requirements. The modified provisions of the QI agreement will be set forth in the FATCA Rev. Proc. that the IRS will publish before the Portal opens for registration.

Existing QIs will be required to renew their QI agreements by registering on the Portal and agreeing to comply with the modified QI agreement described in the FATCA Rev. Proc. Such a renewing QI will be issued a GIIN that it will use for FATCA reporting purposes and establishing its FATCA status with withholding agents. The IRS currently contemplates that the GIIN will also be used by QIs, in lieu of the current QI EIN, for purposes of QI reporting and establishing QI status vis-à-vis withholding agents.

FFIs that wish to apply for QI status for the first time must do so under the existing paper-based QI application process. Once approved as a QI through this process, the FFI must also register or update its information regarding its QI status (including its chapter 4 requirements) through the Portal.

D. Withholding Foreign Partnerships and Withholding Foreign Trusts

The existing agreements governing WPs and WTs will also be modified to incorporate the applicable chapter 4 requirements of these entities (for financial accounts other than equity interests) with respect to their partners, owners and beneficiaries. The FATCA Rev. Proc. will describe these modifications.

Existing WPs and WTs that are FFIs will be required to renew their agreements by registering on the Portal and agreeing to comply with the modified agreement described in the FATCA Rev. Proc. Such a renewing WP or WT will be issued a GIIN that it will use for FATCA reporting purposes and establishing its FATCA status with withholding agents. The IRS currently contemplates that the GIIN will also be used by WPs and WTs, in lieu of the current WP EIN or WT EIN, for purposes of chapter 3 reporting and establishing its status vis-à-vis withholding agents.

FFIs that wish to apply for WP or WT status for the first time must do so under the existing paper-based application process. Once approved as a WP or WT through this process, the FFI must also register or update its information regarding its WP or WT status through the Portal. A foreign entity other than an FFI will be required to apply as a WP or WT or renew its status as such for assuming its chapter 4 requirements under the existing paper-based application process.

E. Foreign Branches of U.S. Financial Institutions

U.S. financial institutions will register their foreign branch operations through the Portal in certain circumstances. A U.S. financial institution with a foreign branch that is a reporting Model 1 FFI must register on behalf of the branch and obtain a GIIN to comply with its FATCA Partner reporting obligations with respect to such branch. A U.S. financial institution with a foreign branch that is a QI and seeks to maintain QI status will register through the Portal to renew its QI status for the branch regardless of whether the branch is a reporting Model 1 FFI. A U.S. financial institution with non-QI branch operations in a Model 2 jurisdiction or in a non-IGA jurisdiction is not required to register with the IRS. The Treasury Department and the IRS are considering ways to eliminate duplicative reporting or effect, as appropriate, uniform reporting under chapters 4 and 61.

II. Future Guidance and Request for Comments

A. Qualified Intermediaries

The Treasury Department and the IRS are considering revising the requirements of the QI agreement for external audit procedures to verify a QI's compliance with its QI agreement. Comments are requested regarding the merits of requiring QIs to provide, in lieu of external audit reports, periodic certifications of compliance similar to that required of participating FFIs under the final regulations. Comments are also requested as to the cases in which internal audits and reviews by third-parties should be required or permitted in lieu of external audits, including the extent to which such reviews should include evaluations of a QI's internal controls in lieu (in whole or in part) of the account review procedures prescribed in Revenue Procedure 2002–55.

B. Private Arrangement Intermediaries

The Treasury Department and the IRS anticipate issuing guidance to allow participating FFIs and registered-deemed compliant FFIs currently acting as private arrangement intermediaries (PAIs) to continue to act as PAIs for FATCA purposes under requirements similar to those specified in the current model QI agreement. Further, the QI agreement will be modified in the FATCA Rev. Proc. to incorporate the requirement that a QI may only contract with a PAI that is a participating FFI or registered-deemed compliant FFI (in addition to the chapter 3 requirements for PAIs). As under the existing procedures applicable to PAIs, PAIs will not be required to separately register with the IRS to obtain PAI status (other than registering for chapter 4 purposes). QIs that contract with PAIs for purposes of their QI agreement will be required to identify these PAIs as part of the Portal registration process described above. As part of the revised requirements for PAIs, the Treasury Department and the IRS anticipate amending the external audit requirements of PAIs to provide requirements comparable to those required of QIs.

C. Coordination With Chapters 3 and 61

The Treasury Department and the IRS intend: (1) to issue guidance coordinating chapters 3 and 61 with chapter 4, in order to reduce or eliminate duplicative reporting as between chapter 4 (and reporting pursuant to a Model 1 IGA) and chapters 3 and 61; and (2) to conform, as appropriate, the withholding, payee identification, and other due diligence rules of chapters 3 and 61 with rules under chapter 4. Comments are requested regarding how such coordination should be undertaken and whether other chapter 4 rules should be coordinated with other Code provisions.

D. Forms

A number of new and revised IRS forms must be issued due to the new certification, reporting, and withholding requirements of chapter 4.

For purposes of obtaining certifications of account holder status for chapter 3 purposes, withholding agents have relied on IRS forms in the ''W–8'' series. The forms in the W–8 series will be modified for chapter 4 purposes. It should be noted, however, that the regulations provide that a financial institution, depending on the circumstances, may also rely on substitute forms, written certifications, and other documentation.

The IRS has already released draft versions of a revised Form W–8IMY, ''Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding,'' a revised Form W–8ECI ''Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States,'' and a revised Form W–8EXP ''Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding.'' The IRS intends to release shortly a new Form W–8BEN–E, ''Certificate of Status for Beneficial Owner for United States Tax Withholding (Entities),'' to be used only by beneficial owners that are entities and, shortly thereafter, a draft version of a revised Form W–8BEN, ''Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding,'' to be used only by beneficial owners that are individuals.

The IRS also intends to release shortly a new Form 8966, ''FATCA Report,'' that will be used by FFIs (including QIs, WPs, WTs) and withholding agents (in limited circumstances) to comply with their chapter 4 reporting obligations. This new Form 8966 will set forth all the information that must be reported with respect to financial accounts in accordance with these regulations. Finally, the IRS intends to issue shortly a revised Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' and Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding.'' Revised Forms 1042 and 1042–S will set forth all the information that must be reported by withholding agents to meet their obligations under both § 1.1474–1(c) and (d) (chapter 4) and § 1.1461–1 (chapter 3). The IRS intends to publish later in 2013 or in early 2014 final versions of Form 8966 and Form 1042–S, together with the XML-based schemas to be used by withholding agents for the electronic filing of these forms.

Effect on Other Documents

The following publications are obsolete as of January 28, 2013.

Notice 2010–60, 2010–37 I.R.B. 329
Notice 2011–34, 2011–19 I.R.B. 765
Notice 2011–53, 2011–32 I.R.B. 124
Announcement 2012–42, 2012–47 I.R.B. 561

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It also has been determined that sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 6) do not apply to these regulations.

The collection of information in these final regulations is contained in a number of provisions including §§ 1.1471–2, 1.1471–3, 1.1471–4, 1.1472–1, and 1.1474–1. The IRS intends that these information collection requirements will be satisfied by persons complying with revised chapter 3 reporting forms, new reporting forms based on these final regulations, the terms, conditions, and requirements of an FFI agreement, a QI agreement, a WP agreement, or a WT agreement that satisfies the requirements of an applicable revenue procedure to be issued by the IRS, or the alternative certification and documentation requirements set out in these final regulations. As a result, for purposes of the Paperwork Reduction Act (44 U.S.C. 3507), the reporting burden associated with the collection of information in these final regulations will be reflected in the respective OMB Form 83–1, *Paperwork Reduction Act Submission,* associated with new or revised IRS forms, the revenue procedure relating to the FFI, QI, WP, and WT agreements, and the alternative certification and documentation requirements of these final regulations.

It is hereby certified that the collection of information in these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Although the Treasury Department and the IRS anticipate that

a substantial number of domestic small entities will be affected by the collection of information in these final regulations, the Treasury Department and the IRS believe that the economic impact to these entities resulting from the information collection requirements will not be significant.

The domestic small business entities that are subject to chapter 4 and these regulations are those domestic business entities that are payors of U.S. source FDAP income that are presently subject to the information collection and reporting rules under chapter 3. These domestic small business entities are required to be familiar with chapter 3's information collection and reporting rules and forms in order to determine a payee's U.S. withholding status and, based on that status, withhold and remit the proper amount of tax on payments of U.S. source FDAP income. Small domestic business entities that are payors of U.S. source FDAP income have developed and implemented internal reporting and information collection systems under which the business entity satisfies its chapter 3 payee identification, withholding, and tax remittance requirements.

The IRS intends to revise the present chapter 3 reporting forms, with the revised forms being used by a payor of U.S. source FDAP income to satisfy the payor's obligations under chapters 3 and 4. As a result, these final regulations' information collection requirements build on reporting and information collection systems familiar to and currently used by payors of U.S. source FDAP income that are domestic small business entities, thereby reducing the burden imposed on these entities. In addition, the final regulations' alternative certification and documentation provisions reduce the information otherwise required to be collected by withholding agents and submitted by payees, thereby further limiting the burden imposed by the final regulations on domestic small business entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required.

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires that an agency prepare a costs and benefits analysis and a budgetary impact statement before promulgating a rule 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 Reform Act requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Treasury Department and the IRS have determined that there is no federal mandate imposed by this rulemaking 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.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. No comments were received from the Small Business Administration.

Drafting Information

The principal authors of §§ 1.1471–1 through 1.1474–7 are John Sweeney, Danielle Nishida, Tara Ferris, Quyen Huynh, Josephine Firehock, and Susan Massey, all of the Office of Associate Chief Counsel (International). The principal author of § 301.1474–1 is Michael E. Hara, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income Taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.1471–1 is also issued under 26 U.S.C. 1471

Section 1.1471–2 is also issued under 26 U.S.C. 1471

Section 1.1471–3 is also issued under 26 U.S.C. 1471

Section 1.1471–4 is also issued under 26 U.S.C. 1471

Section 1.1471–5 is also issued under 26 U.S.C. 1471

Section 1.1471–6 is also issued under 26 U.S.C. 1471

Section 1.1472–1 is also issued under 26 U.S.C. 1472

Section 1.1473–1 is also issued under 26 U.S.C. 1473

Section 1.1474–1 is also issued under 26 U.S.C. 1474

Section 1.1474–2 is also issued under 26 U.S.C. 1474

Section 1.1474–3 is also issued under 26 U.S.C. 1474

Section 1.1474–4 is also issued under 26 U.S.C. 1474

Section 1.1474–5 is also issued under 26 U.S.C. 1474

Section 1.1474–6 is also issued under 26 U.S.C. 1474

Section 1.1474–7 is also issued under 26 U.S.C. 1474 * * *

■ **Par. 2.** The undesignated center heading and subheading immediately following § 1.1464–1 are removed.

■ **Par. 3.** Section 1.1471–1 and the editorial note that follows are removed.

■ **Par. 4.** A new undesignated center heading and § 1.1471–0 are added immediately following § 1.1464–1 to read as follows:

Information Reporting by Foreign Financial Institutions

§ 1.1471–0 Outline of regulation provisions for sections 1471 through 1474.

This section lists the table of contents for §§ 1.1471–1 through 1.1474–7 and § 301.1474–1 of this chapter.

§ 1.1471–1 Scope of chapter 4 and definitions.

(a) Scope of chapter 4 of the Internal Revenue Code.

(b) Definitions.

(1) Account.

(2) Account holder.

(3) Active NFFE.

(4) AML due diligence.

(5) Annuity contract.

(6) Assumes primary withholding responsibility.

(7) Beneficial owner.

(8) Blocked account.

(9) Broker.

(10) Cash value.

(11) Cash value insurance contract.

(12) Certified deemed-compliant FFI.

(13) Change in circumstances.

(14) Chapter 3.

(15) Chapter 4.

(16) Chapter 4 reportable amount.

(17) Chapter 4 status.

(18) Clearing organization.

(19) Complex trust.

(20) Consolidated obligations.

(21) Custodial account.

(22) Custodial institution.

(23) Customer master file.

(24) Deemed-compliant FFI.

(25) Deferred annuity contract.

(26) Depository account.

(27) Depository institution.

(28) Documentary evidence.

(29) Documentation.

(30) Dormant account.

(31) Effective date of the FFI agreement.

(32) EIN.

(33) Election to be withheld upon.
(34) Electronically searchable information.
(35) Entity.
(36) Entity account.
(37) Excepted NFFE.
(38) Exempt beneficial owner.
(39) Expanded affiliated group.
(40) FATF.
(41) FATF-compliant jurisdiction.
(42) FFI.
(43) FFI agreement.
(44) Financial account.
(45) Financial institution.
(46) Flow-through entity.
(47) Flow-through withholding certificate.
(48) Foreign entity.
(49) Foreign passthru payment.
(50) Foreign payee.
(51) Foreign person.
(52) GIIN.
(53) Grandfathered obligation.
(54) Grantor trust.
(55) Gross proceeds.
(56) Group annuity contract.
(57) Group insurance contract.
(58) Immediate annuity.
(59) Individual account.
(60) Insurance company.
(61) Insurance contract.
(62) Intermediary.
(63) Intermediary withholding certificate.
(64) Investment entity.
(65) Investment-linked annuity contract.
(66) Investment-linked insurance contract.
(67) IRS FFI list.
(68) Life annuity contract.
(69) Life insurance contract.
(70) Limited branch.
(71) Limited FFI.
(72) Model 1 IGA.
(73) Model 2 IGA.
(74) NFFE.
(75) Nonparticipating FFI.
(76) Nonreporting IGA FFI.
(77) Non-U.S. account.
(78) NQI.
(79) NWP.
(80) NWT.
(81) Offshore account.
(82) Offshore obligation.
(83) Owner.
(84) Owner-documented FFI.
(85) Participating FFI.
(86) Participating FFI group.
(87) Partnership.
(88) Passive NFFE.
(89) Passthru payment.
(90) Payee.
(91) Payment with respect to an offshore obligation.
(92) Payor.
(93) Permanent residence address.
(94) Person.
(95) Preexisting account.
(96) Preexisting entity account.
(97) Preexisting individual account.
(98) Preexisting obligation.
(99) Pre-FATCA Form W–8.
(100) Prima facie FFI.
(101) QI.
(102) QI agreement.
(103) QI branch of a U.S. financial institution.
(104) Recalcitrant account holder.
(105) Registered deemed-compliant FFI.
(106) Relationship manager.
(107) Reporting Model 1 FFI.
(108) Responsible officer.
(109) Restricted distributor.
(110) Simple trust.
(111) Specified insurance company.
(112) Specified U.S. person.
(113) Sponsored FFI.
(114) Sponsored FFI group.
(115) Sponsoring entity.
(116) Standardized industry code.
(117) Standing instructions to pay amounts.
(118) Subject to withholding.
(119) Substantial U.S. owner.
(120) Territory entity.
(121) Territory financial institution.
(122) Territory financial institution treated as a U.S. person.
(123) Territory NFFE.
(124) TIN.
(125) U.S. account.
(126) U.S. branch treated as a U.S. person.
(127) U.S. financial institution.
(128) U.S. indicia.
(129) U.S. owned foreign entity.
(130) U.S. payee.
(131) U.S. payor.
(132) U.S. person.
(133) U.S. source FDAP income.
(134) U.S. territory.
(135) U.S. withholding agent.
(136) Withholdable payment.
(137) Withholding.
(138) Withholding agent.
(139) Withholding certificate.
(140) WP.
(141) Written statement.
(142) WT.
(c) Effective/applicability date.

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) Requirement to withhold on payments to FFIs.
(1) General rule of withholding.
(2) Special withholding rules.
(i) Requirement to withhold on payments of U.S. source FDAP income to participating FFIs that are NQIs, NWPs, or NWTs.
(ii) Residual withholding responsibility of intermediaries and flow-through entities.
(iii) Requirement to withhold if a participating FFI or registered deemed-compliant FFI makes an election to be withheld upon.
(A) Election to be withheld upon for U.S. source FDAP income.
(B) Election to be withheld upon for gross proceeds.
(iv) Withholding obligation of a territory financial institution.
(v) Withholding obligation of a foreign branch of a U.S. financial institution.
(vi) Payments of gross proceeds.
(3) Coordination of withholding under sections 1471(a) and (b).
(4) Payments for which no withholding is required.
(i) Exception to withholding if the withholding agent lacks control, custody, or knowledge.
(A) In general.
(B) Example.
(ii) Exception to withholding for certain payments made prior to January 1, 2016 (transitional).
(A) In general.
(B) Prima facie FFIs.
(iii) Payments to a participating FFI.
(iv) Payments to a deemed-compliant FFI.
(v) Payments to an exempt beneficial owner.
(vi) Payments to a territory financial institution.
(vii) Payments to an account held with a clearing organization with FATCA-compliant membership.
(viii) Payments to certain excepted accounts.
(5) Withholding requirements if source or character of payments is unknown.
(i) General rule.
(ii) Optional escrow procedure.
(b) Grandfathered obligations.
(1) Grandfathered treatment of outstanding obligations.
(2) Definitions.
(i) Grandfathered obligation.
(ii) Obligation.
(iii) Date outstanding.
(iv) Material modification.
(3) Application to flow-through entities.
(i) Partnerships.
(ii) Simple trusts.
(iii) Grantor trusts.
(4) Determination by withholding agent of grandfathered treatment.
(i) In general.
(ii) Determination of material modification.
(iii) Record retention.
(c) Effective/applicability date.

§ 1.1471–3 Identification of payee.

(a) Payee defined.
(1) In general.
(2) Payee with respect to a financial account.
(3) Exceptions.
(i) Certain foreign agents or intermediaries.
(ii) Foreign flow-through entity.
(iii) U.S. intermediary or agent of a foreign person.
(iv) Territory financial institution.
(v) Disregarded entity or branch.
(vi) U.S. branch of certain foreign banks or foreign insurance companies.
(vii) Foreign branch of a U.S. person.
(b) Determination of payee's status.
(1) Determining whether a payment is received by an intermediary.
(2) Determination of entity type.
(3) Determination of whether the payment is made to a QI, WP, or WT.
(4) Determination of whether the payee is receiving effectively connected income.
(c) Rules for reliably associating a payment with a withholding certificate or other appropriate documentation.
(1) In general.
(2) Reliably associating a payment with documentation if a payment is made through an intermediary or flow-through entity that is not the payee.
(i) In general.
(ii) Exception to entity account documentation rules for an offshore account of an intermediary or flow-through entity.
(3) Requirements for validity of certificates.
(i) Form W–9.
(ii) Beneficial owner withholding certificate (Form W–8BEN).
(iii) Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W–8IMY).

(A) In general.
(B) Withholding statement.
(*1*) In general.
(*2*) Special requirements for an FFI withholding statement.
(*3*) Special requirements for a chapter 4 withholding statement.
(*4*) Special requirements for an exempt beneficial owner withholding statement.
(C) Failure to provide allocation information.
(D) Special rules applicable to a withholding certificate of a QI that assumes primary withholding responsibility under chapter 3.
(E) Special rules applicable to a withholding certificate of a QI that does not assume primary withholding responsibility under chapter 3.
(F) Special rules applicable to a withholding certificate of a territory financial institution that agrees to be treated as a U.S. person.
(G) Special rules applicable to a withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person.
(H) Special rules applicable to a withholding certificate of a U.S. branch treated as a U.S. person.
(iv) Certificate for exempt status (Form W–8EXP).
(v) Certificate for effectively connected income (Form W–8ECI).
(4) Requirements for written statements.
(5) Requirements for documentary evidence.
(i) Foreign status.
(A) Certificate of residence.
(B) Individual government identification.
(C) QI documentation.
(D) Entity government documentation.
(E) Third-party credit report.
(ii) Chapter 4 status.
(A) General documentary evidence.
(B) Preexisting account documentary evidence.
(C) Payee-specific documentary evidence.
(6) Applicable rules for withholding certificates, written statements, and documentary evidence.
(i) Who may sign the withholding certificate or written statement.
(ii) Period of validity.
(A) General rule.
(B) Indefinite validity.
(C) Indefinite validity in the case of certain offshore obligations.
(D) Exception for certificate for effectively connected income.
(E) Change in circumstances.
(*1*) Defined.
(*2*) Obligation to notify withholding agent of a change in circumstances.
(*3*) Withholding agent's obligation with respect to a change in circumstances.
(iii) Record retention.
(A) In general.
(B) Exception for documentary evidence received with respect to offshore obligations.
(iv) Electronic transmission of withholding certificate, written statement, and documentary evidence.
(v) Acceptable substitute withholding certificate.
(A) In general.
(B) Non-IRS form for individuals.
(vi) Electronic confirmation of TIN on withholding certificate.
(vii) Reliance on a prior version of a withholding certificate.
(7) Curing documentation errors.
(i) Curing inconsequential errors on a withholding certificate.
(ii) Documentation received after the time of payment.
(8) Documentation furnished on account-by-account basis unless exception provided for sharing documentation within expanded affiliated group.
(i) Single branch systems.
(ii) Universal account systems.
(iii) Shared account systems.
(iv) Document sharing gross proceeds.
(9) Reliance on documentation collected by or certifications provided by other persons.
(i) Shared documentation system maintained by an agent.
(ii) Third-party data providers.
(iii) Reliance on certification provided by introducing brokers.
(iv) Reliance on documentation and certifications provided between principals and agents.
(A) In general.
(B) Reliance upon certification of the principal.
(C) Document sharing.
(D) Examples.
(v) Reliance upon documentation for accounts acquired in merger or bulk acquisition for value.
(d) Documentation requirements to establish payee's chapter 4 status.
(1) Reliance on pre-FATCA Form W–8.
(2) Identification of U.S. persons.
(i) In general.
(ii) Reliance on documentary evidence.
(iii) Preexisting obligations.
(3) Identification of individuals that are foreign persons.
(i) In general.
(ii) Exception for offshore obligations.
(4) Identification of participating FFIs and registered deemed-complaint FFIs.
(i) In general.
(ii) Exception for payments made prior to January 1, 2017, with respect to preexisting obligations (transitional).
(iii) Exception for offshore obligations.
(iv) Exceptions for payments to reporting Model 1 FFIs.
(v) Reason to know.
(5) Identification of certified deemed-compliant FFIs.
(i) In general.
(ii) Sponsored, closely-held investment vehicles.
(A) In general.
(B) Offshore obligations.
(6) Identification of owner-documented FFIs.
(i) In general.
(ii) Auditor's letter substitute.
(iii) Documentation for owners of payee.
(iv) Content of FFI owner reporting statement.
(v) Exception for preexisting obligations (transitional).
(vi) Exception for offshore obligations.
(vii) Exception for certain obligations of $1,000,000 or less.
(7) Nonreporting IGA FFIs.
(i) In general.
(ii) Exception for offshore obligations.
(8) Identification of nonparticipating FFIs.
(i) In general.
(ii) Special documentation rules for payments made to an exempt beneficial owner through a nonparticipating FFI.
(9) Identification of exempt beneficial owners.
(i) Identification of foreign governments, governments of U.S. territories, international organizations, and foreign central banks of issue.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(ii) Identification of retirement funds.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iii) Identification of entities wholly owned by exempt beneficial owners.
(10) Identification of territory financial institutions.
(i) Identification of territory financial institutions that are beneficial owners.
(A) In general.
(B) Exception for preexisting offshore obligations.
(ii) Identification of territory financial institutions acting as intermediaries or that are flow-through entities.
(iii) Reason to know.
(11) Identification of excepted NFFEs.
(i) Identification of excepted nonfinancial group entities.
(A) In general.
(B) Exception for offshore obligations.
(ii) Identification of excepted nonfinancial start-up companies.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iii) Identification of excepted nonfinancial entities in liquidation or bankruptcy.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iv) Identification of section 501(c) organizations.
(A) In general.
(B) Reason to know.
(v) Identification of non-profit organizations.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(D) Reason to know.
(vi) Identification of NFFEs that are publicly traded corporations.
(A) Exception for offshore obligations.
(B) Exception for preexisting offshore obligations.
(vii) Identification of NFFE affiliates.
(A) Exception for offshore obligations.
(B) Exception for preexisting offshore obligations.
(viii) Identification of excepted territory NFFEs.
(A) Exception for payments made prior to January 1, 2017, with respect to preexisting

obligations of $1,000,000 or less (transitional).
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations of $1,000,000 or less.
(ix) Identification of active NFFEs.
(A) Exception for offshore obligations.
(B) Exception for preexisting offshore obligations.
(C) Limit on reason to know.
(12) Identification of passive NFFEs.
(i) Exception for offshore obligations.
(ii) Special rule for preexisting offshore obligations.
(iii) Required owner certification for passive NFFEs.
(A) In general.
(B) Exception for preexisting obligations of $1,000,000 or less (transitional).
(e) Standards of knowledge.
(1) In general.
(2) Notification by the IRS.
(3) Participating FFIs and registered deemed-compliant FFIs.
(i) In general.
(ii) Special rules for reporting Model 1 FFIs.
(4) Reason to know.
(i) Information conflicting with person's claim of chapter 4 status.
(ii) Specific standards of knowledge applicable to withholding certificates.
(A) In general.
(B) Classification of U.S. status, U.S. address, or U.S. telephone number.
(*1*) Presumption of individual's foreign status.
(*2*) Presumption of entity's foreign status.
(C) U.S. place of birth.
(*1*) Accounts opened on or after January 1, 2014.
(*2*) Preexisting obligations.
(D) Standing instructions with respect to offshore obligations.
(iii) Specific standard of knowledge applicable to written statements.
(iv) Specific standard of knowledge applicable to documentary evidence.
(A) In general.
(B) Classification of U.S. status, U.S. address, or U.S. telephone number.
(*1*) Presumption of individual's foreign status.
(*2*) Presumption of entity's foreign status.
(C) U.S. place of birth.
(*1*) Accounts opened on or after January 1, 2014.
(*2*) Preexisting obligations.
(D) Standing instructions.
(E) Standards of knowledge applicable to certain types of documentary evidence.
(*1*) Financial statement.
(*2*) Organizational documents.
(v) Specific standards of knowledge applicable when only documentary evidence is a code or classification described in paragraph (c)(5)(ii)(B) of this section.
(A) U.S. indicia for entities.
(B) Documentation required to cure U.S. indicia.
(vi) Specific standards of knowledge applicable to documentation received from intermediaries and flow-through entities.
(A) In general.
(B) Limits on reason to know with respect to documentation received from participating FFIs and registered deemed-compliant FFIs that are intermediaries or flow-through entities.
(vii) Limits on reason to know.
(A) Scope of review for preexisting obligations of entities.
(B) Reason to know there is a U.S. telephone number associated with a preexisting obligation.
(C) Reason to know there are U.S. indicia associated with preexisting offshore obligations.
(D) Limits on reason to know for multiple obligations belonging to a single account holder.
(viii) Reasonable explanation supporting claim of foreign status.
(5) Conduit financing arrangements.
(6) Additional guidance.
(f) Presumptions regarding chapter 4 status of the person receiving the payment in the absence of documentation.
(1) In general.
(2) Presumptions of classification as an individual or entity.
(i) In general.
(ii) Documentary evidence furnished for offshore obligation.
(3) Presumptions of U.S. or foreign status.
(i) Payments to entities with indicia of foreign status.
(ii) Payments to certain exempt recipients.
(iii) Payments with respect to offshore obligations.
(4) Presumption of chapter 4 status for a foreign entity.
(5) Presumption of status as an intermediary.
(6) Presumption of effectively connected income for payments to certain U.S. branches.
(7) Joint payees.
(i) In general.
(ii) Exception for offshore obligations.
(8) Rebuttal of presumptions.
(9) Effect of reliance on presumptions and of actual knowledge or reason to know otherwise.
(i) In general.
(ii) Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.
(g) Effective/applicability date.
§ 1.1471–4 FFI agreement.
(a) In general.
(1) Withholding.
(2) Identification and documentation of account holders.
(3) Reporting.
(4) Expanded affiliated group.
(5) Verification.
(6) Event of default.
(7) Refunds.
(b) Withholding requirements.
(1) In general.
(2) Withholding determination.
(3) Satisfaction of withholding requirements.
(4) Foreign passthru payments.
(5) Withholding on limited FFIs and limited branches.
(i) Limited FFIs.
(ii) Limited branches.
(6) Special rule for dormant accounts.
(7) Withholding requirements for U.S. branches of participating FFIs that are treated as U.S. persons.
(c) Due diligence for the identification and documentation of account holders and payees.
(1) Scope of paragraph.
(2) General rules for the identification and documentation of account holders and payees.
(i) Overview.
(ii) Standards of knowledge.
(A) In general.
(B) Limits on reason to know with respect to certain accounts acquired in merger of bulk acquisition.
(*1*) In general.
(*2*) Participating FFIs and certain deemed-compliant FFIs that apply the due diligence rules, and U.S. financial institutions.
(iii) Change in circumstances.
(A) Obligation to identify a change in circumstances.
(B) Definition of change in circumstances.
(C) Requirements following a change in circumstances.
(iv) Record retention.
(v) Special rule for U.S. branches of participating FFIs that are treated as U.S. persons.
(3) Identification and documentation procedure for entity accounts and payees.
(i) In general.
(ii) Timeframe for applying identification and documentation procedure for entity accounts and payees.
(iii) Documentation exception for certain preexisting entity accounts.
(A) Accounts to which this exception applies.
(B) Aggregation of entity accounts.
(C) Election to forgo exception.
(4) Identification and documentation procedure for individual accounts other than preexisting accounts.
(i) In general.
(ii) Reliance on third-party for identification of individual accounts other than preexisting accounts.
(iii) Alternative identification and documentation procedure for certain cash value insurance or annuity contracts.
(A) Group cash value insurance contracts or group annuity contracts.
(B) Accounts held by beneficiaries of a cash value insurance contract that is a life insurance contract.
(5) Identification and documentation procedure for preexisting individual accounts.
(i) In general.
(ii) Special rule for preexisting individual accounts previously documented as U.S. accounts for purposes of chapter 3 or 61.
(iii) Exceptions for certain low value preexisting individual accounts.
(A) Accounts to which an exception applies.
(B) Aggregation of accounts.
(C) Election to forgo exception.
(iv) Specific identification and documentation procedures for preexisting individual accounts.
(A) In general.
(B) U.S. indicia and relevant documentation rules.

(*1*) U.S. indicia.
(*2*) Documentation to be retained upon identifying U.S. indicia.
(*i*) Designation of account holder as a U.S. citizen or resident.
(*ii*) Unambiguous indication of a U.S. place of birth.
(*iii*) U.S. address or U.S. mailing address.
(*iv*) Only U.S. telephone numbers.
(*v*) U.S. telephone numbers and non-U.S. telephone numbers.
(*vi*) Standing instructions to pay amounts.
(*vii*) Power of attorney or signatory authority granted to a person with a U.S. address or ''in-care-of'' address or ''hold mail'' address.
(C) Electronic search for identifying U.S. indicia.
(D) Enhanced review for identifying U.S. indicia in the case of certain high-value accounts.
(*1*) In general.
(*2*) Relationship manager inquiry.
(*3*) Additional review of non-electronic records.
(*4*) Limitations on the enhanced review in the case of comprehensive electronically searchable information.
(E) Exception for preexisting individual accounts that a participating FFI has documented as held by foreign individuals for purposes of meeting its obligations under chapter 61 or its QI, WP, or WT agreement.
(6) Examples.
(7) Certifications of responsible officer.
(d) Account reporting.
(1) Scope of paragraph.
(2) Reporting requirements in general.
(i) Accounts subject to reporting.
(ii) Financial institution required to report an account.
(A) In general.
(B) Special reporting of account holders of territory financial institutions.
(C) Special reporting of account holders of a sponsored FFI.
(D) Special reporting of account holders that are owner-documented FFIs.
(E) Branch reporting of accounts.
(iii) Special U.S. account reporting rules for U.S. payors.
(A) Special reporting rule for U.S. payors other than U.S. branches.
(B) Special reporting rules for U.S. branches treated as U.S. persons.
(3) Reporting of accounts under section 1471(c)(1).
(i) In general.
(ii) Accounts held by specified U.S. persons.
(iii) Accounts held by U.S. owned foreign entities.
(iv) Special reporting of accounts held by owner-documented FFIs.
(v) Branch reporting.
(vi) Form for reporting accounts under section 1471(c)(1).
(vii) Time and manner of filing.
(viii) Extensions in filing.
(4) Descriptions applicable to reporting requirements of § 1.1471–4(d)(3).
(i) Address.
(ii) Account number.
(iii) Account balance or value.
(A) In general.
(B) Currency translation of account balance or value.
(iv) Payments made with respect to an account.
(A) Depository accounts.
(B) Custodial accounts.
(C) Other accounts.
(D) Transfers and closing of deposit, custodial, insurance, and annuity financial accounts.
(E) Amount and character of payments subject to reporting.
(F) Currency translation.
(v) Record retention requirements.
(5) Election to perform chapter 61 reporting.
(i) In general.
(A) Election under section 1471(c)(2).
(B) Election to report in a manner similar to section 6047(d).
(ii) Additional information to be reported.
(iii) Special reporting of accounts held by owner-documented FFIs.
(iv) Branch reporting.
(v) Time and manner of making the election.
(vi) Revocation of election.
(vii) Filing of information under election.
(6) Reporting on recalcitrant account holders.
(i) In general.
(ii) Definition of dormant account.
(iii) End of dormancy.
(iv) Forms.
(v) Time and manner of filing.
(vi) Record retention requirements.
(7) Special reporting rules with respect to the 2013 through 2015 calendar years.
(i) In general.
(ii) Participating FFIs that report under § 1.1471–4(d)(3).
(A) Reporting with respect to the 2013 and 2014 calendar years.
(B) Reporting with respect to the 2015 calendar year.
(iii) Participating FFIs that report under § 1.1471–4(d)(5).
(iv) Forms for reporting.
(A) In general.
(B) Special determination date and timing for reporting with respect to the 2013 calendar year.
(8) Reporting requirements of QIs, WPs and WTs.
(9) Examples.
(e) Expanded affiliated group requirements.
(1) In general.
(2) Limited branches.
(i) In general.
(ii) Branch defined.
(iii) Limited branch defined.
(iv) Conditions for limited branch status.
(v) Term of limited branch status (transitional).
(3) Limited FFI.
(i) In general.
(ii) Limited FFI defined.
(iii) Conditions for limited FFI status.
(iv) Period for limited FFI status (transitional).
(4) Special rule for QIs.
(f) Verification.
(1) In general.
(2) Compliance program.
(i) In general.
(ii) Consolidated compliance program.
(A) In general.
(B) Requirements of compliance FI.
(3) Certification of compliance.
(i) In general.
(ii) Certification of effective internal controls.
(iii) Qualified certification.
(iv) Material failures defined.
(4) IRS review of compliance.
(i) General inquiries.
(ii) Inquiries regarding substantial non-compliance.
(g) Event of default.
(1) Defined.
(2) Notice of event of default.
(3) Remediation of event of default.
(h) Collective credit or refund procedures for overpayments.
(1) In general.
(2) Persons for which a collective refund is not permitted.
(3) Payments for which a collective refund is permitted.
(4) Procedural and other requirements for collective refund.
(i) Legal prohibitions on reporting U.S. accounts and withholding.
(1) In general.
(2) Requesting wavier or closure of a U.S. account.
(i) In general.
(ii) Valid and effective waiver for a U.S. account.
(iii) Closure or transfer of U.S. account.
(3) Legal prohibitions preventing withholding.
(i) In general.
(ii) Block or transfer accounts or obligations.
(j) Effective/applicability date.

§ 1.1471–5 Definitions applicable to section 1471.

(a) U.S. accounts.
(1) In general.
(2) Definition of U.S. account.
(3) Account holder.
(i) In general.
(ii) Grantor trust.
(iii) Financial accounts held by agents that are not financial institutions.
(iv) Jointly held accounts.
(v) Account holder for insurance and annuity contracts.
(vi) Examples.
(4) Exceptions to U.S. account status.
(i) Exception for certain individual accounts of participating FFIs.
(ii) Election to forgo exception.
(iii) Example.
(b) Financial accounts.
(1) In general.
(i) Depository account.
(ii) Custodial account.
(iii) Equity or debt interest.
(A) Equity or debt interest in an investment entity.
(B) Certain equity or debt interests in a holding company or treasury center.
(C) Equity or debt interests in other financial institutions.
(iv) Insurance and annuity contracts.
(2) Exceptions.
(i) Certain savings accounts.
(A) Retirement and pension accounts.
(B) Non-retirement savings accounts.
(C) Rollovers.
(D) Coordination with section 6038D.
(E) Account that is tax-flavored.

(ii) Certain term life insurance contracts.
(iii) Account held by an estate.
(iv) Certain escrow accounts.
(v) Certain annuity contracts.
(vi) Account or product excluded under an intergovernmental agreement.
(3) Definitions.
(i) Depository account.
(A) In general.
(B) Exceptions.
(ii) Custodial account.
(iii) Equity interest in certain entities.
(A) Partnership.
(B) Trust.
(iv) Regularly traded on an established securities market.
(v) Value of interest determined, directly or indirectly, primarily by reference to assets the give rise (or could give rise) to withholdable payments.
(A) Equity interest.
(B) Debt interest.
(vi) Redemption or retirement amount or return earned on the interest determined, directly or indirectly, primarily by reference to one or more investment entities or passive NFFEs.
(A) Equity interest.
(B) Debt interest.
(vii) Cash value insurance contracts.
(A) In general.
(B) Cash value.
(C) Amounts excluded from cash value.
(D) Policyholder dividend.
(4) Account balance or value.
(i) In general.
(ii) Special rule for immediate annuity.
(A) Immediate annuities without minimum benefit guarantees.
(B) Immediate annuities with a minimum benefit guarantee.
(C) Net present value of amounts payable in future periods.
(iii) Account aggregation requirements.
(A) In general.
(B) Aggregation rule for relationship managers.
(C) Examples.
(iv) Current translation of balance or value.
(5) Account maintained by financial institution.
(c) U.S. owned foreign entity.
(d) Definition of FFI.
(e) Definition of financial institution.
(1) In general.
(2) Banking or similar business.
(i) In general.
(ii) Exception for certain lessors and lenders.
(iii) Application of section 581.
(iv) Effect of local regulation.
(3) Holding financial assets for others as a substantial portion of its business.
(i) Substantial portion.
(A) In general.
(B) Special rule for start-up entities.
(ii) Income attributable to holding financial assets and related financial services.
(iii) Effect of local regulation.
(4) Investment entity.
(i) In general.
(ii) Financial assets.
(iii) Primarily conducts as a business.
(A) In general.
(B) Special rule start-up entities.
(iv) Primarily attributable to investing, reinvesting, or trading in financial assets.
(A) In general.
(B) Special rule for start-up entities.
(v) Examples.
(5) Exclusions.
(i) Excepted nonfinancial group entities.
(A) In general.
(B) Nonfinancial group.
(C) Holding company.
(D) Treasury center.
(E) Captive finance company.
(ii) Excepted nonfinancial start-up companies or companies entering a new line of business.
(A) In general.
(B) Exception for investment funds.
(iii) Excepted nonfinancial entities in liquidation or bankruptcy.
(iv) Excepted inter-affiliate FFI.
(v) Section 501(c) entities.
(vi) Non-profit organizations.
(6) Reserving activities of an insurance company.
(f) Deemed-compliant FFIs.
(1) Registered deemed-compliant FFIs.
(i) Registered deemed-compliant FFI categories.
(A) Local FFIs.
(B) Nonreporting members of participating FFI groups.
(C) Qualified collective investment vehicles.
(D) Restricted funds.
(E) Qualified credit card issuers.
(F) Sponsored investment entities and controlled foreign corporations.
(ii) Procedural requirements for registered deemed-compliant FFIs.
(iii) Deemed-compliant FFI that is merged or acquired.
(2) Certified deemed-compliant FFIs.
(i) Nonregistering local bank.
(ii) FFIs with only low-value accounts.
(iii) Sponsored, closely-held investment vehicles.
(iv) Limited life debt investment entities (transitional).
(3) Owner-documented FFIs.
(i) In general.
(ii) Requirements of owner-documented FFI status.
(4) Definition of restricted distributor.
(g) Recalcitrant account holders.
(1) Scope.
(2) Recalcitrant account holder.
(3) Start of recalcitrant account holder status.
(i) Preexisting accounts identified under the procedures described in § 1.1471–4(c) for identifying U.S. accounts.
(A) In general.
(B) Accounts other than high-value accounts.
(C) High-value accounts.
(D) Preexisting accounts that become high-value accounts.
(ii) Accounts that are not preexisting accounts and accounts requiring name/TIN correction.
(iii) Accounts with changes in circumstances.
(4) End of recalcitrant account holder status.
(h) Passthru payment.
(1) Defined.
(2) Foreign passthru payment.
(i) Expanded affiliated group.
(1) Scope of paragraph.
(2) Expanded affiliated group defined.
(i) In general.
(ii) Partnerships and entities other than corporations.
(3) Exception for FFIs holding certain capital investments.
(4) Seed capital.
(5) Anti-abuse rule.
(j) Effective/applicability date.

§ 1.1471–6 Payments beneficially owned by exempt beneficial owners.

(a) In general.
(b) Any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing.
(1) Integral part.
(2) Controlled entity.
(3) Inurement to the benefit of private persons.
(c) Any international organization or any wholly owned agency or instrumentality thereof.
(d) Foreign central bank of issue.
(1) In general.
(2) Separate instrumentality.
(3) Bank for International Settlements.
(4) Income on certain collateral.
(e) Governments of U.S. territories.
(f) Certain retirement funds.
(1) Treaty-qualified retirement fund.
(2) Broad participation retirement fund.
(3) Narrow participating retirement funds.
(4) Fund formed pursuant to a plan similar to a section 401(a) plan.
(5) Investment vehicles exclusively for retirement funds.
(6) Pension fund of an exempt beneficial owner.
(7) Example.
(g) Entities wholly owned by exempt beneficial owners.
(h) Exception for commercial activities.
(1) General rule.
(2) Limitation.
(i) Effective/applicability date.

§ 1.1472–1 Withholding on NFFEs.

(a) In general.
(b) Withholdable payments made to an NFFE.
(1) In general.
(2) Transitional relief.
(c) Exceptions.
(1) Beneficial owner that is an excepted NFFE.
(i) Publicly traded corporation.
(A) Regularly traded.
(B) Special rules regarding the regularly traded requirement.
(*1*) Year of initial public offering.
(*2*) Classes of stock treated as meeting the regularly traded requirement.
(*3*) Anti-abuse rule.
(C) Established securities market.
(*1*) In general.
(*2*) Foreign exchange with multiple tiers.
(*3*) Computation of dollar value of stock traded.
(ii) Certain affiliated entities related to a publicly traded corporation.
(iii) Certain territory entities.
(iv) Active NFFEs.
(A) Passive income.
(B) Exceptions from passive income treatment.

(C) Methods of measuring assets.
(v) Excepted nonfinancial entities.
(2) Payments made to a WP, WT, or an exempt beneficial owner.
(d) Rules for determining payee and beneficial owner.
(1) In general.
(2) Payments made to an NFFE that is a WP or WT.
(3) Payments made to a partner or beneficiary of an NFFE that is an NWP or NWT.
(4) Payments made to a beneficial owner that is an NFFE.
(5) Absence of valid documentation.
(e) Information reporting requirements.
(1) Reporting on withholdable payments.
(2) Reporting on substantial U.S. owners.
(f) Effective/applicability date.

§ 1.1473–1 Section 1473 definitions.

(a) Definition of withholdable payment.
(1) In general.
(2) U.S. source FDAP income defined.
(i) In general.
(A) FDAP income defined.
(B) U.S. source.
(C) Exceptions to withholding on U.S. source FDAP income not applicable under chapter 4.
(ii) Special rule for certain interest.
(iii) Original issue discount.
(iv) REMIC residual interests.
(v) Withholding liability of payee that is satisfied by withholding agent.
(vi) Special rule for sales of interest bearing debt obligations.
(vii) Payment of U.S. source FDAP income.
(A) Amount of payment of U.S. source FDAP income.
(B) When payment of U.S. source FDAP income is made.
(3) Gross proceeds defined.
(i) Sale or other disposition.
(A) In general.
(B) Special rule for sales effected by brokers.
(C) Special rule for gross proceeds from sales settles by a clearing organization.
(ii) Property of a type that can produce interest or dividend payments that would be U.S. source FDAP income.
(A) In general.
(B) Contracts producing dividend equivalent payments.
(C) Regulated investment company distributions.
(iii) Payment of gross proceeds.
(A) When gross proceeds are paid.
(B) Amount of gross proceeds.
(4) Payments not treated as withholdable payments.
(i) Certain short-term obligations.
(ii) Effectively connected income.
(iii) Excluded nonfinancial payments.
(iv) Gross proceeds from sales of excluded property.
(v) Fractional shares.
(vi) Offshore payments of U.S. source FDAP income prior to 2017 (transitional).
(5) Special payment rules for flow-through entities, complex trusts, and estates.
(i) In general.
(ii) Partnerships.
(iii) Simple trusts.
(iv) Complex trusts and estates.
(v) Grantor trusts.
(vi) Special rule for an NWP or NWT.
(vii) Special rule for determining when gross proceeds are treated as paid to a partner, owner, or beneficiary of a flow-through entity.
(6) Reporting of withholdable payments.
(7) Example.
(b) Substantial U.S. owner.
(1) Definition.
(2) Indirect ownership of foreign entities.
(i) Indirect ownership of stock.
(ii) Indirect ownership in a foreign partnership or ownership of a beneficial interest in a foreign trust.
(iii) Ownership and holdings through options.
(iv) Determination of proportionate interest.
(v) Interests owned or held by a related person.
(3) Beneficial interest in a foreign trust.
(i) In general.
(ii) Determining the 10 percent threshold in the case of a beneficial interest in a foreign trust.
(iii) Valuation rules for beneficial interests in foreign trusts.
(4) Exceptions.
(i) De minimis amount or value exception.
(ii) Trusts wholly owned by certain U.S. persons.
(5) Special rule for certain financial institutions.
(6) Determination dates for substantial U.S. owners.
(7) Examples.
(c) Specified U.S. person.
(d) Withholding agent.
(1) In general.
(2) Participating FFIs and registered deemed-compliant FFIs as withholding agents.
(3) Grantor trusts as withholding agents.
(4) Deposit and return requirements.
(5) Multiple withholding agents.
(6) Exception for certain individuals.
(e) Foreign entity.
(f) Effective/applicability date.

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

(a) Payment and returns of tax withheld.
(1) In general.
(2) Withholding agent liability.
(3) Use of agents.
(i) In general.
(ii) Authorized agent.
(iii) Liability of withholding agent acting through an agent.
(4) Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions.
(i) In general.
(ii) Withholding satisfied by another withholding agent.
(b) Payment of withheld tax.
(1) In general.
(2) Special rule for foreign passthru payments and payments of gross proceeds that include an undetermined amount of income subject to tax.
(c) Income tax return.
(1) In general.
(2) Participating FFIs, registered deemed-compliant FFIs, and U.S. branches treated as U.S. persons.
(3) Amended returns.
(d) Information returns for payment reporting.
(1) Filing requirement.
(i) In general.
(ii) Recipient.
(A) Defined.
(B) Persons that are not recipients.
(2) Amounts subject to reporting.
(i) In general.
(ii) Exception to reporting.
(iii) Coordination with chapter 3.
(3) Required information.
(4) Method of reporting.
(i) Payments by U.S. withholding agent to recipients.
(A) Payments to certain entities that are beneficial owners.
(B) Payments to participating FFIs, deemed-compliant FFIs, and certain QIs.
(C) Amounts paid to a U.S. branch of a participating FFI or registered deemed-compliant FFI.
(D) Amounts paid to territory financial institutions that are flow-through entities or acting as intermediaries.
(E) Amounts paid to NFFEs.
(ii) Payments made by withholding agents to certain entities that are not recipients.
(A) Entities that provide information for a withholding agent to perform specific payee reporting.
(B) Nonparticipating FFI that is a flow-through entity or intermediary.
(C) Disregarded entities.
(iii) Reporting by participating FFIs and deemed-compliant FFIs (including QIs, WPs, and WTs).
(A) In general.
(B) Special reporting requirements of participating FFIs, deemed-compliant FFIs, and FFIs that make an election under section 1471(b)(3).
(C) Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, and WTs) for certain payments made to nonparticipating FFIs (transitional).
(D) Reporting by U.S. branches of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person.
(iv) Reporting by territory financial institutions.
(v) Nonparticipating FFIs.
(vi) Other withholding agents.
(e) Magnetic media reporting.
(f) Indemnification of withholding agent.
(g) Extensions of time to file Forms 1042 and 1042–S.
(h) Penalties.
(i) Additional reporting requirements with respect to U.S. owned foreign entities and owner-documented FFIs.
(1) Reporting by certain withholding agents with respect to owner-documented FFIs.
(2) Reporting by certain withholding agents with respect to U.S. owned foreign entities that are NFFEs.
(3) Cross reference to reporting by participating FFIs.
(j) Effective/applicability date.

§ 1.1474–2 Adjustments for overwithholding or underwithholding of tax.

(a) Adjustments of overwithheld tax.
(1) In general.
(2) Overwithholding.
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(i) General rule.
(ii) Record maintenance.
(4) Set-offs.
(5) Examples.
(b) Withholding of additional tax when underwithholding occurs.
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(b) Amounts paid to persons that are not the beneficial owners.
(c) Effective/applicability date.
§ 1.1474–4 Tax paid only once.
(a) Tax paid.
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§ 1.1474–5 Refunds or credits.
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(1) In general.
(2) Limitation to refund and credit for a nonparticipating FFI.
(3) Requirement to provide additional documentation for certain beneficial owners.
(i) In general.
(ii) Claim of reduced withholding under an income tax treaty.
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(a) In general.
(b) Coordination of withholding for amounts subject to withholding under sections 1441, 1442, and 1443.
(1) In general.
(2) When withholding is applied.
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(c) Coordination with amounts subject to withholding under section 1445.
(1) In general.
(2) Determining amount of distribution from certain domestic corporations subject to section 1445 or chapter 4 withholding.
(i) Distribution from qualified investment entity.
(ii) Distribution from a United States real property holding corporation.
(d) Coordination with section 1446.
(1) In general.
(2) Determining the amount of distribution subject to section 1446.
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§ 1.1474–7 Confidentiality of information.
(a) Confidentiality of information.
(b) Exception for disclosure of participating FFIs.
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§ 301.1474–1 Required use of magnetic media for financial institutions filing Form 1042–S or Form 8966.
(a) Financial institutions filing certain information returns.
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(c) Failure to file.
(d) Meaning of terms.
(1) Magnetic media.
(2) Financial institution.
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■ **Par. 5.** Section 1.1471–1 is added to read as follows:

§ 1.1471–1 Scope of chapter 4 and definitions.

(a) *Scope of chapter 4 of the Internal Revenue Code.* Sections 1.1471–1 through 1.1474–7 provide rules for withholding when a withholding agent makes a payment to an FFI or NFFE and prescribe the requirements for and definitions relevant to FFIs and NFFEs to which withholding will not apply. Section 1.1471–1 provides definitions for terms used in chapter 4 of the Internal Revenue Code (Code) and the regulations thereunder. Section 1.1471–2 provides rules for withholding under section 1471(a) on payments to FFIs, including the exception from withholding for payments made with respect to certain grandfathered obligations. Section 1.1471–3 provides rules for determining the payee of a payment and the documentation requirements to establish a payee's chapter 4 status. Section 1.1471–4 describes the requirements of an FFI agreement under section 1471(b) and the application of sections 1471(b) and (c) to an expanded affiliated group of FFIs. Section 1.1471–5 defines terms relevant to section 1471 and the FFI agreement and defines categories of FFIs that will be deemed to have met the requirements of section 1471(b) pursuant to section 1471(b)(2). Section 1.1471–6 defines classes of beneficial owners of payments that are exempt from withholding under chapter 4. Section 1.1472–1 provides rules for withholding when a withholding agent makes a payment to an NFFE, and defines categories of NFFEs that are not subject to withholding. Section 1.1473–1 provides definitions of the statutory terms in section 1473. Section 1.1474–1 provides rules relating to a withholding agent's liability for withheld tax, filing of income tax and information returns, and depositing of tax withheld. Section 1.1474–2 provides rules relating to adjustments for overwithholding and underwithholding of tax. Section 1.1474–3 provides the circumstances in which a credit is allowed to a beneficial owner for a withheld tax. Section 1.1474–4 provides that a chapter 4 withholding obligation need only be collected once. Section 1.1474–5 contains rules relating to credits and refunds of tax withheld. Section 1.1474–6 provides rules coordinating withholding under sections 1471 and 1472 with withholding provisions under other sections of the Code. Section 1.1474–7 provides the confidentiality requirement for information obtained to comply with the requirements of chapter 4. Any reference in the provisions of sections 1471 through 1474 to an amount that is stated in U.S. dollars includes the foreign currency equivalent of that amount. Except as otherwise provided, the provisions of sections 1471 through 1474 and the regulations thereunder apply only for purposes of chapter 4. See § 301.1474–1 of this chapter for the requirements for reporting on magnetic media that apply to financial institutions making payments or otherwise reporting accounts pursuant to chapter 4.

(b) *Definitions.* Except as otherwise provided in this paragraph (b) or under the terms of an applicable Model 2 IGA, the following definitions apply for purposes of sections 1471 through 1474 and the regulations under those sections.

(1) *Account.* The term *account* means a financial account as defined in § 1.1471–5(b).

(2) *Account holder.* The term *account holder* means the person who holds an account, as determined under § 1.1471–5(a)(3).

(3) *Active NFFE.* The term *active NFFE* has the meaning set forth in § 1.1472–1(c)(1)(iv).

(4) *AML due diligence.* The term *AML due diligence* means the customer due diligence procedures of a financial institution pursuant to the anti-money laundering or similar requirements to which the financial institution, or branch thereof, is subject. This includes identifying the customer (including the owners of the customer), understanding the nature and purpose of the account, and ongoing monitoring.

(5) *Annuity contract.* The term *annuity contract* means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an annuity contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years. For purposes of the preceding sentence, it is immaterial whether a contract satisfies any of the substantive U.S. tax rules (for example, sections 72(s), 72(u), 817(h), and the investor control prohibition) applicable to the taxation of a contract holder or issuer.

(6) *Assumes primary withholding responsibility.* The term *assumes primary withholding responsibility* means that a QI, territory financial institution, or U.S. branch of a participating FFI or registered deemed-compliant FFI that assumes responsibility for withholding on a

payment for purposes of chapters 3 and 4 as if it were a U.S. person. A QI may only assume primary withholding responsibility if it does not make an election to be withheld upon with respect to the payment.

(7) *Beneficial owner.* Except as provided in § 1.1472–1(d), § 1.1471–6(d)(4), and § 1.1471–6(f), the term *beneficial owner* has the meaning set forth in § 1.1441–1(c)(6).

(8) *Blocked account.* The term *blocked account* has the meaning set forth in § 1.1471–4(e)(2)(iii)(B).

(9) *Broker.* The term *broker* means any person, U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. Examples of a broker include an obligor that regularly issues and retires its own debt obligations, a corporation that regularly redeems its own stock, and a clearing organization that effects sales of securities for its members. A broker does not include an international organization described in § 1.1471–6(c) that redeems or retires an obligation of which it is the issuer, a stock transfer agent that records transfers of stock for a corporation if the nature of the activities of the agent is such that the agent ordinarily would not know the gross proceeds from sales, an escrow agent that effects no sales other than transactions incidental to the purpose of the escrow (such as sales to collect on collateral), or a corporation that issues and retires long-term debt on an irregular basis.

(10) *Cash value.* The term *cash value* has the meaning set forth in § 1.1471–5(b)(3)(vii)(B).

(11) *Cash value insurance contract.* The term *cash value insurance contract* has the meaning set forth in § 1.1471–5(b)(3)(vii).

(12) *Certified deemed-compliant FFI.* The term *certified deemed-compliant FFI* means an FFI described in § 1.1471–5(f)(2).

(13) *Change in circumstances.* The term *change in circumstances* has the meaning set forth in § 1.1471–3(c)(6)(ii)(E) for withholding agents and, in the case of a participating FFI, has the meaning set forth in § 1.1471–4(c)(2)(iii).

(14) *Chapter 3.* For purposes of chapter 4, the term *chapter 3* means sections 1441 through 1464 and the regulations thereunder, but does not include sections 1445 and 1446 and the regulations thereunder, unless the context indicates otherwise.

(15) *Chapter 4.* The term *chapter 4* means sections 1471 through 1474 and the regulations thereunder.

(16) *Chapter 4 reportable amount.* The term *chapter 4 reportable amount* has the meaning set forth in § 1.1474–1(d)(2)(i).

(17) *Chapter 4 status.* The term *chapter 4 status* means a person's status as a U.S. person, a specified U.S. person, an individual that is a foreign person, a participating FFI, a deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, an excepted NFFE, or a passive NFFE.

(18) *Clearing organization.* The term *clearing organization* means an entity that is in the business of holding securities for its member organizations or clearing trades of securities and transferring, or instructing the transfer of, securities by credit or debit to the account of a member without the necessity of physical delivery of the securities.

(19) *Complex trust.* A *complex trust* is a trust that is not a simple trust or a grantor trust.

(20) *Consolidated obligations.* The term *consolidated obligations* means multiple obligations that a withholding agent (including a withholding agent that is an FFI) has chosen to treat as a single obligation in order to treat the obligations as preexisting obligations pursuant to paragraph (b)(98)(ii) of this section or in order to share documentation between the obligations pursuant to § 1.1471–3(c)(8). A withholding agent that has opted to treat multiple obligations as consolidated obligations pursuant to the previous sentence must also treat the obligations as a single obligation for purposes of satisfying the standards of knowledge requirements set forth in §§ 1.1471–3(e) and 1.1471–4(c)(2)(ii), and for purposes of determining the balance or value of any of the obligations when applying any of the account thresholds applicable to due diligence or reporting as set forth in §§ 1.1471–3(c)(6)(ii), 1.1471–3(d), 1.1471–4(c), 1.1471–5(a)(4), and 1.1471–5(b)(3)(vii). For example, with respect to consolidated obligations, if a withholding agent has reason to know that the chapter 4 status assigned to the account holder or payee of one of the consolidated obligations is inaccurate, then it has reason to know that the chapter 4 status assigned for all other consolidated obligations of the account holder or payee is inaccurate. Similarly, to the extent that an account balance or value is relevant for purposes of applying any account threshold to one or more of the consolidated obligations, the withholding agent must aggregate the balance or value of all such consolidated obligations.

(21) *Custodial account.* The term *custodial account* has the meaning set forth in § 1.1471–5(b)(3)(ii).

(22) *Custodial institution.* The term *custodial institution* has the meaning set forth in § 1.1471–5(e)(1)(ii).

(23) *Customer master file.* A *customer master file* includes the primary files of a participating FFI or deemed-compliant FFI for maintaining account holder information, such as information used for contacting account holders and for satisfying AML due diligence.

(24) *Deemed-compliant FFI.* The term *deemed-compliant FFI* means an FFI that is treated, pursuant to section 1471(b)(2) and § 1.1471–5(f), as meeting the requirements of section 1471(b). The term *deemed-compliant FFI* also includes a QI branch of a U.S. financial institution that is a reporting Model 1 FFI.

(25) *Deferred annuity contract.* The term *deferred annuity contract* means an annuity contract other than an immediate annuity contract.

(26) *Depository account.* The term *depository account* has the meaning set forth in § 1.1471–5(b)(3)(i).

(27) *Depository institution.* The term *depository institution* has the meaning set forth in § 1.1471–5(e)(1)(i).

(28) *Documentary evidence.* The term *documentary evidence* means documents, other than a withholding certificate or written statement, that a withholding agent is permitted to rely upon to determine the chapter 4 status of a person in accordance with § 1.1471–3(c)(5).

(29) *Documentation.* The term *documentation* means withholding certificates, written statements, documentary evidence, and other documents that may be relevant in determining a person's chapter 4 status, including any document containing a determination of the account holder's citizenship or residency for tax or AML due diligence purposes or an account holder's claim of citizenship or residency for tax or AML due diligence purposes.

(30) *Dormant account.* The term *dormant account* has the meaning set forth in § 1.1471–4(d)(6)(ii).

(31) *Effective date of the FFI agreement.* The term *effective date of the FFI agreement* means the date on which the IRS issues a GIIN to the participating FFI. For participating FFIs that receive a GIIN prior to December 31, 2013, the effective date of the FFI agreement is December 31, 2013.

(32) *EIN.* The term *EIN* means an employer identification number (also known as a federal tax identification number) described in § 301.6109–1(a)(1)(i) of this chapter.

(33) *Election to be withheld upon.* The term *election to be withheld upon* has the meaning set forth in § 1.1471–2(a)(2)(iii).

(34) *Electronically searchable information.* The term *electronically searchable information* means information that an FFI maintains in its tax reporting files, customer master files, or similar files, and that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Information, data, or files are not electronically searchable merely because they are stored in an image retrieval system (such as portable document format (.pdf) or scanned documents).

(35) *Entity.* The term *entity* means any person other than an individual.

(36) *Entity account.* The term *entity account* means an account held by one or more entities.

(37) *Excepted NFFE.* The term *excepted NFFE* means an NFFE that is described in § 1.1472–1(c)(1).

(38) *Exempt beneficial owner.* The term *exempt beneficial owner* means any person described in § 1.1471–6(b) through (g) or that is otherwise treated as an exempt beneficial owner pursuant to a Model 1 IGA or Model 2 IGA.

(39) *Expanded affiliated group.* The term *expanded affiliated group* has the meaning set forth in § 1.1471–5(i)(2).

(40) *FATF.* The term *FATF* means the Financial Action Task Force, an inter-governmental body that develops and promotes international policies to combat money laundering and terrorist financing.

(41) *FATF-compliant jurisdiction.* The term *FATF-compliant jurisdiction* means a jurisdiction that—

(i) Is not subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing risks emanating from the jurisdiction;

(ii) Is not a jurisdiction with strategic AML/CFT (anti-money laundering and combating the financing of terrorism) deficiencies that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies; and

(iii) Is not a jurisdiction with strategic AML/CFT deficiencies that the FATF has identified as not making sufficient progress on its action plan agreed upon with the FATF.

(42) *FFI.* The term *FFI* or *foreign financial institution* has the meaning set forth in § 1.1471–5(d).

(43) *FFI agreement.* The term *FFI agreement* means an agreement that is described in § 1.1471–4(a). An FFI agreement includes a QI agreement, a withholding partnership agreement, and a withholding trust agreement that is entered into by an FFI (other than an FFI that is a registered deemed-compliant FFI, including a reporting Model 1 FFI) and that has an effective date or renewal date on or after December 31, 2013. The term *FFI agreement* also includes a QI agreement that is entered into by a foreign branch of a U.S. financial institution (other than a branch that is a reporting Model 1 FFI) and that has an effective date or renewal date on or after December 31, 2013.

(44) *Financial account.* The term *financial account* has the meaning set forth in § 1.1471–5(b).

(45) *Financial institution.* The term *financial institution* has the meaning set forth in § 1.1471–5(e).

(46) *Flow-through entity.* The term *flow-through entity* means a partnership, simple trust, or grantor trust, as determined under U.S. tax principles.

(47) *Flow-through withholding certificate.* The term *flow-through withholding certificate* means a Form W–8IMY submitted by a foreign partnership, foreign simple trust, or foreign grantor trust.

(48) *Foreign entity.* The term *foreign entity* has the meaning set forth in § 1.1473–1(e).

(49) *Foreign passthru payment.* The term *foreign passthru payment* has the meaning set forth in § 1.1471–5(h)(2).

(50) *Foreign payee.* The term *foreign payee* means any payee other than a U.S. payee.

(51) *Foreign person.* The term *foreign person* means any person other than a U.S. person and includes a QI branch of a U.S. financial institution.

(52) *GIIN.* The term *GIIN* or *Global Intermediary Identification Number* means the identification number that is assigned to a participating FFI or registered deemed-compliant FFI. The term *GIIN* or *Global Intermediary Identification Number* also includes the identification number assigned to a reporting Model 1 FFI for purposes of identifying such entity to withholding agents. All GIINs will appear on the IRS FFI list.

(53) *Grandfathered obligation.* The term *grandfathered obligation* has the meaning set forth in § 1.1471–2(b).

(54) *Grantor trust.* A *grantor trust* is a trust with respect to which one or more persons are treated as owners of all or a portion of the trust under sections 671 through 679. If only a portion of the trust is treated as owned by a person, that portion is a grantor trust with respect to that person.

(55) *Gross proceeds.* The term *gross proceeds* has the meaning set forth in § 1.1473–1(a)(3).

(56) *Group annuity contract.* The term *group annuity contract* means an annuity contract under which the obligees are individuals who are affiliated through an employer, trade association, labor union, or other association or group.

(57) *Group insurance contract.* The term *group insurance contract* means an insurance contract that—

(i) Provides coverage on individuals who are affiliated through an employer, trade association, labor union, or other association or group; and

(ii) Charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

(58) *Immediate annuity.* The term *immediate annuity* means an annuity contract that—

(i) Is purchased with a single premium or annuity consideration; and

(ii) No later than one year from the purchase date of the contract commences to pay annually or more frequently substantially equal periodic payments.

(59) *Individual account.* The term *individual account* means an account held by one or more individuals.

(60) *Insurance company.* The term *insurance company* means an entity or arrangement—

(i) That is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the company does business;

(ii) The gross income of which (for example, gross premiums and gross investment income) arising from insurance, reinsurance, and annuity contracts for the immediately preceding calendar year exceeds 50 percent of total gross income for such year; or

(iii) The aggregate value of the assets of which associated with insurance, reinsurance, and annuity contracts at any time during the immediately preceding calendar year exceeds 50 percent of total assets at any time during such year.

(61) *Insurance contract.* The term *insurance contract* means a contract (other than an annuity contract) under which the issuer in exchange for consideration agrees to pay an amount upon the occurrence of a specified contingency involving mortality,

morbidity, accident, liability, or property risk.

(62) *Intermediary.* The term *intermediary* has the meaning set forth in § 1.1441–1(c)(13).

(63) *Intermediary withholding certificate.* The term *intermediary withholding certificate* means a Form W–8IMY submitted by an intermediary.

(64) *Investment entity.* The term *investment entity* has the meaning set forth in § 1.1471–5(e)(1)(iii).

(65) *Investment-linked annuity contract.* The term *investment-linked annuity contract* means an annuity contract under which benefits or premiums are adjusted to reflect the investment return or market value of assets associated with the contract.

(66) *Investment-linked insurance contract.* The term *investment-linked insurance contract* means an insurance contract under which benefits, premiums, or the period of coverage are adjusted to reflect the investment return or market value of assets associated with the contract.

(67) *IRS FFI list.* The term *IRS FFI list* means the list published by the IRS that contains the names and GIINs for all participating FFIs, registered deemed-compliant FFIs, and reporting Model 1 FFIs.

(68) *Life annuity contract.* The term *life annuity contract* means an annuity contract that provides for payments over the life or lives of one or more individuals.

(69) *Life insurance contract.* The term *life insurance contract* means an insurance contract under which the issuer, in exchange for consideration, agrees to pay an amount upon the death of one or more individuals. That a contract provides one or more payments (for example, for endowment benefits or disability benefits) in addition to a death benefit will not cause the contract to be other than a life insurance contract. For purposes of the preceding sentence, it is immaterial whether a contract satisfies any of the substantive U.S. tax rules (for example, sections 101(f), 817(h), 7702, or investor control prohibition) applicable to the taxation of the contract holder or issuer.

(70) *Limited branch.* The term *limited branch* has the meaning set forth in § 1.1471–4(e)(2)(iii).

(71) *Limited FFI.* The term *limited FFI* has the meaning set forth in § 1.1471–4(e)(3)(ii).

(72) *Model 1 IGA.* The term *Model 1 IGA* means an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to implement FATCA through reporting by financial institutions to such foreign government or agency thereof, followed by automatic exchange of the reported information with the IRS. The IRS will publish a list identifying all countries that are treated as having in effect a Model 1 IGA.

(73) *Model 2 IGA.* The term *Model 2 IGA* means an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by financial institutions directly to the IRS in accordance with the requirements of an FFI agreement, supplemented by the exchange of information between such foreign government or agency thereof and the IRS. The IRS will publish a list identifying all countries that are treated as having in effect a Model 2 IGA.

(74) *NFFE.* The term *NFFE* or *non-financial foreign entity* means a foreign entity that is not a financial institution (including a territory NFFE). The term also means a foreign entity treated as an NFFE pursuant to a Model 1 IGA or Model 2 IGA.

(75) *Nonparticipating FFI.* The term *nonparticipating FFI* means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

(76) *Nonreporting IGA FFI.* The term *nonreporting IGA FFI* means an FFI that is identified as a nonreporting financial institution pursuant to a Model 1 IGA or Model 2 IGA that is not a registered deemed-compliant FFI.

(77) *Non-U.S. account.* The term *non-U.S. account* means an account that is not a U.S. account and that does not have an account holder that is a nonparticipating FFI or recalcitrant account holder.

(78) *NQI.* The term *NQI* or *nonqualified intermediary* has the meaning set forth in § 1.1441–1(c)(14).

(79) *NWP.* The term *NWP* or *nonwithholding foreign partnership* means a foreign partnership that is not a withholding foreign partnership.

(80) *NWT.* The term *NWT* or *nonwithholding foreign trust* means a foreign trust as defined in section 7701(a)(31)(B) that is a simple trust or grantor trust and is not a withholding foreign trust.

(81) *Offshore account.* The term *offshore account* means an account that is an offshore obligation, all payments to which are made outside of the United States, within the meaning of § 1.6049–5(e).

(82) *Offshore obligation.* The term *offshore obligation* means any account, instrument, or contract that is maintained and executed at an office or branch of the withholding agent at any location outside of the United States or in any location in a U.S. territory. The term also includes any equity interest in a foreign entity that is purchased by the owner of such interest outside of the United States either directly from the entity or from another person that is located outside of the United States.

(83) *Owner.* The term *owner* means a person described in § 1.1473–1(b)(1), without regard to whether such person is a U.S. person and without regard to whether such person owns a ten percent interest in the entity. The term also includes a person that owns a discretionary interest in a trust and receives a distribution during the calendar year.

(84) *Owner-documented FFI.* The term *owner-documented FFI* means an FFI described in § 1.1471–5(f)(3).

(85) *Participating FFI.* The term *participating FFI* means an FFI that has agreed to comply with the requirements of an FFI agreement, including an FFI described in a Model 2 IGA that has agreed to comply with the requirements of an FFI agreement. The term *participating FFI* also includes a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.

(86) *Participating FFI group.* The term *participating FFI group* means an expanded affiliated group that includes one or more participating FFIs and meets the requirements of § 1.1471–4(e)(1). The term *participating FFI group* also means an expanded affiliated group in which one or more members of the group is a reporting Model 1 FFI and each member of the group that is an FFI is a registered deemed-compliant FFI, nonreporting IGA FFI, limited FFI, or retirement fund described in § 1.1471–6(f).

(87) *Partnership.* The term *partnership* has the meaning set forth in § 301.7701–2(c)(1) of this chapter.

(88) *Passive NFFE.* The term *passive NFFE* means an NFFE other than an excepted NFFE.

(89) *Passthru payment.* The term *passthru payment* has the meaning set forth in § 1.1471–5(h).

(90) *Payee.* The term *payee* has the meaning set forth in § 1.1471–3(a).

(91) *Payment with respect to an offshore obligation.* The term *payment with respect to an offshore obligation* means a payment made outside of the United States, within the meaning of § 1.6049–5(e), with respect to an offshore obligation.

(92) *Payor.* The term *payor* has the meaning set forth in §§ 31.3406(a)–2 of this chapter and 1.6049–(a)(2) and generally includes a withholding agent.

(93) *Permanent residence address.* The term *permanent residence address* is the address in the country of which the person claims to be a resident for purposes of that country's income tax. The address of a financial institution with which the person maintains an account, a post office box, or an address used solely for mailing purposes is not a permanent residence address unless such address is the only permanent address used by the person and appears as the person's registered address in the person's organizational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not a permanent residence address. If the person is an individual who does not have a tax residence in any country, the permanent address is the place at which the person normally resides. If the person is an entity and does not have a tax residence in any country, then the permanent residence address is the place at which the person maintains its principal office.

(94) *Person.* The term *person* has the meaning set forth in section 7701(a)(1) and the regulations thereunder, and also includes an entity or arrangement that is an insurance company. The term *person* does not include a wholly owned entity that is disregarded for federal tax purposes as an entity separate from its owner. Notwithstanding the previous sentence, the term *person* includes, with respect to a withholdable payment, a QI branch of a U.S. financial institution.

(95) *Preexisting account.* The term *preexisting account* means a financial account that is a preexisting obligation.

(96) *Preexisting entity account.* The term *preexisting entity account* means a preexisting account held by one or more entities.

(97) *Preexisting individual account.* The term *preexisting individual account* means a preexisting account held by one or more individuals.

(98) *Preexisting obligation*—(i) The term *preexisting obligation* means any account, instrument, contract, debt, or equity interest maintained, executed, or issued by the withholding agent that is outstanding on December 31, 2013. With respect to a withholding agent that is a participating FFI, the term *preexisting obligation* means any account, instrument, or contract (including any debt or equity interest) maintained, executed, or issued by the FFI that is outstanding on the effective date of the FFI agreement. With respect to a withholding agent that is a registered deemed-compliant FFI, a preexisting obligation means any account, instrument, or contract (including any debt or equity interest) that is maintained, executed, or issued by the FFI prior to the later of the date that the FFI registers as a deemed-compliant FFI pursuant to § 1.1471–5(f)(1) and receives a GIIN or the date the FFI is required to implement its account opening procedures under § 1.1471–5(f).

(ii) The term *preexisting obligation* also includes any obligation (referring to an account, instrument, contract, debt, or equity interest) of an account holder or payee, regardless of the date such obligation was entered into, if—

(A) The account holder or payee also holds with the withholding agent (or a member of the withholding agent's expanded affiliated group or sponsored FFI group) an account, instrument, contract, or equity interest that is a preexisting obligation under paragraph (b)(98)(i) of this section;

(B) The withholding agent (and, as applicable, the member of the withholding agent's expanded affiliated group or sponsored FFI group) treats both of the aforementioned obligations, and any other obligations of the payee or account holder that are treated as preexisting obligations under this paragraph (b)(98)(ii), as consolidated obligations; and

(C) With respect to an obligation that is subject to AML due diligence, the withholding agent is permitted to satisfy such AML due diligence for the obligation by relying upon the AML due diligence performed for the preexisting obligation described in paragraph (b)(96)(i) of this section.

(99) *Pre-FATCA Form W–8.* The term *pre-FATCA Form W–8* means a version of a Form W–8 (or a substitute form) that was issued prior to 2013 and that does not contain chapter 4 statuses but otherwise meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate and has not expired.

(100) *Prima facie FFI.* The term *prima facie FFI* means an entity described in § 1.1471–2(a)(4)(ii)(B).

(101) *QI.* The term *QI* or *qualified intermediary* has the meaning set forth in § 1.1441–1(e)(5)(ii).

(102) *QI agreement.* The term *QI agreement* means the agreement described in § 1.1441–1(e)(5)(iii).

(103) *QI branch of a U.S. financial institution.* The term *QI branch of a U.S. financial institution* means a foreign branch of a U.S. financial institution for which a QI agreement is in effect.

(104) *Recalcitrant account holder.* The term *recalcitrant account holder* has the meaning set forth in § 1.1471–5(g).

(105) *Registered deemed-compliant FFI.* The term *registered deemed-compliant FFI* means an FFI described in § 1.1471–5(f)(1). The term *registered deemed-compliant FFI* also includes a QI branch of a U.S. financial institution that is a reporting Model 1 FFI.

(106) *Relationship manager.* A *relationship manager* is an officer or other employee of an FFI who is assigned responsibility for specific account holders on an on-going basis (including as an officer or employee that is a member of an FFI's private banking department), advises account holders regarding their banking, investment, trust, fiduciary, estate planning, or philanthropic needs, and recommends, makes referrals to, or arranges for the provision of financial products, services, or other assistance by internal or external providers to meet those needs. Notwithstanding the previous sentence, a person is only a relationship manager with respect to an account that has a balance or value of more than $1,000,000, taking into account the aggregation rules described in § 1.1471–5(b)(4)(iii)(A) and (B).

(107) *Reporting Model 1 FFI.* The term *reporting Model 1 FFI* means an FFI with respect to which a foreign government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than an FFI that is treated as a nonparticipating FFI under the Model 1 IGA.

(108) *Responsible officer.* The term *responsible officer* means, with respect to a participating FFI, an officer of any participating FFI or reporting Model 1 FFI in the participating FFI's expanded affiliated group with sufficient authority to fulfill the duties of a responsible officer described in § 1.1471–4, which include the requirement to periodically certify to the IRS regarding the FFI's compliance with its FFI agreement. The term *responsible officer* means, in the case of a registered deemed-compliant FFI, an officer of any deemed-compliant FFI or participating FFI in the deemed-compliant FFI's expanded affiliated group with sufficient authority to ensure that the FFI meets the applicable requirements of § 1.1471–5(f). If a participating FFI elects to be part of a consolidated compliance program, the term *responsible officer* means an officer of the compliance FI (as described in § 1.1471–4(f)) with sufficient authority to fulfill the duties of a responsible officer described in § 1.1471–4(f)(2) and (3) on behalf of each FFI in the compliance group.

(109) *Restricted distributor.* The term *restricted distributor* means an entity described in § 1.1471–5(f)(4).

(110) *Simple trust.* The term *simple trust* means a trust that meets the requirements of section 651(a)(1) and (2).

(111) *Specified insurance company.* The term *specified insurance company* has the meaning set forth in § 1.1471–5(e)(1)(iv).

(112) *Specified U.S. person.* The term *specified U.S. person* or *specified United States person* has the meaning set forth in § 1.1473–1(c).

(113) *Sponsored FFI.* The term *sponsored FFI* means any entity described in § 1.1471–5(f)(1)(i)(F) (sponsored investment entities and sponsored controlled foreign corporations) or § 1.1471–5(f)(2)(iii) (sponsored, closely held investment vehicles).

(114) *Sponsored FFI group.* The term *sponsored FFI group* means a group of sponsored FFIs that share the same sponsoring entity.

(115) *Sponsoring entity.* The term *sponsoring entity* means an entity that registers with the IRS and agrees to perform the due diligence, withholding, and reporting obligations of one or more FFIs pursuant to § 1.1471–5(f)(1)(i)(F) or (2)(iii).

(116) *Standardized industry code.* The term *standardized industry code* means a code that is part of a coding system used by the withholding agent or FFI to classify account holders by business type for purposes other than U.S. tax purposes and that was implemented by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent was formed or organized.

(117) *Standing instructions to pay amounts.* The term *standing instructions to pay amounts* means current payment instructions provided by the account holder, or an agent of the account holder, that will repeat without further instructions being provided by the account holder. Therefore, for example, a payment instruction to make an isolated payment is not a standing instruction to pay amounts, even if the instructions are given one year in advance. However, an instruction to make payments indefinitely is a standing instruction to pay amounts for the period during which such instructions are in effect, even if such instructions are amended after a single payment.

(118) *Subject to withholding.* The term *subject to withholding,* with respect to an amount, means an amount for which withholding is required under chapter 4 or an amount for which chapter 4 withholding was otherwise applied.

(119) *Substantial U.S. owner.* The term *substantial U.S. owner* or *substantial United States owner* has the meaning set forth in § 1.1473–1(b).

(120) *Territory entity.* The term *territory entity* means any entity that is incorporated or organized under the laws of any U.S. territory.

(121) *Territory financial institution.* The term *territory financial institution* means a financial institution that is incorporated or organized under the laws of any U.S. territory, not including a territory entity that is an investment entity but that is not a depository institution, custodial institution, or specified insurance company.

(122) *Territory financial institution treated as a U.S. person.* The term *territory financial institution treated as a U.S. person* means a territory financial institution that is treated as a U.S. person under § 1.1471–3(a)(3)(iv).

(123) *Territory NFFE.* The term *territory NFFE* means a territory entity that is not a financial institution, including a territory entity that is an investment entity but is not a depository institution, custodial institution, or specified insurance company.

(124) *TIN.* The term *TIN* means the tax identifying number assigned to a person under section 6109.

(125) *U.S. account.* The term *U.S. account* or *United States account* has the meaning set forth in § 1.1471–5(a).

(126) *U.S. branch treated as a U.S. person.* The term *U.S. branch treated as a U.S. person* means a U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A).

(127) *U.S. financial institution.* The term *U.S. financial institution* means a financial institution that is a U.S. person, including a U.S. branch treated as a U.S. person.

(128) *U.S. indicia.* The term *U.S. indicia* has the meaning set forth in § 1.1471–4(c)(5)(iv)(B) when applied to an individual and as set forth in § 1.1471–3(e)(4)(v)(A) when applied to an entity.

(129) *U.S. owned foreign entity.* The term *U.S. owned foreign entity* or *United States owned foreign entity* has the meaning set forth in § 1.1471–5(c).

(130) *U.S. payee.* The term *U.S. payee* means any payee that is a U.S. person.

(131) *U.S. payor.* The term *U.S. payor* means a U.S. payor or U.S. middleman as defined in § 1.6049–5(c)(5).

(132) *U.S. person.* The term *U.S. person* or *United States person* means a person described in section 7701(a)(30), the United States government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof). For purposes of the preceding sentence, the determination of whether an insurance company is a U.S. person is made without regard to an election by a company not licensed to do business in any State to be subject to U.S. income tax as if it were a domestic insurance company. Thus, a foreign insurance company not licensed to do business in any State that elects pursuant to section 953(d) to be subject to U.S. income tax as if it were a U.S. insurance company is not a U.S. person.

(133) *U.S. source FDAP income.* The term *U.S. source FDAP income* has the meaning set forth in § 1.1473–1(a)(2).

(134) *U.S. territory.* The term *U.S. territory* or *possession of the United States* means American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands.

(135) *U.S. withholding agent.* The term *U.S. withholding agent* means a withholding agent that is either a U.S. person or a U.S. branch of a foreign person.

(136) *Withholdable payment.* The term *withholdable payment* has the meaning set forth in § 1.1473–1(a).

(137) *Withholding.* The term *withholding* means the deduction and remittance of tax at the applicable rate from a payment.

(138) *Withholding agent.* The term *withholding agent* has the meaning set forth in § 1.1473–1(d).

(139) *Withholding certificate.* The term *withholding certificate* means a Form W–8, Form W–9, or any other certificate that under the Code or regulations certifies or establishes the chapter 4 status of a payee or beneficial owner.

(140) *WP.* The term *WP* or *withholding foreign partnership* means a foreign partnership that has executed the agreement described in § 1.1441–5(c)(2)(ii).

(141) *Written statement.* The term *written statement* has the meaning set forth in § 1.1471–3(c)(4).

(142) *WT.* The term *WT* or *withholding foreign trust* means a foreign grantor trust or foreign simple trust that has executed the agreement described in § 1.1441–5(e)(5)(v).

(c) *Effective/applicability date.* This section applies January 28, 2013.

■ **Par. 6.** Section 1.1471–2 is added to read as follows:

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) *Requirement to withhold on payments to FFIs*—(1) *General rule of withholding.* Under section 1471(a), notwithstanding any exemption from withholding under any other provision of the Code or regulations, a withholding agent must withhold 30

percent of any withholdable payment made after December 31, 2013, to a payee that is an FFI unless either the withholding agent can reliably associate the payment with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under paragraph (a)(4) of this section, or the payment is made under a grandfathered obligation that is described in paragraph (b) of this section or constitutes gross proceeds from the disposition of such an obligation. A withholding agent that is making a payment must determine who the payee is under § 1.1471–3(a) with respect to that payment and the chapter 4 status of such payee. See § 1.1471–3 for requirements for determining the chapter 4 status of a payee, including additional documentation requirements where a payment is made to an intermediary or flow-through entity that is not the payee. Withholding under this section applies without regard to whether the payee receives a withholdable payment as a beneficial owner or as an intermediary. See paragraph (a)(2)(iv) of this section for a description of the withholding requirements imposed on territory financial institutions as withholding agents under chapter 4. In the case of a withholdable payment to an NFFE, a withholding agent is required to determine whether withholding applies under section 1472 and § 1.1472–1. Except as otherwise provided in the regulations under chapter 4, a withholding obligation arises on the date a payment is made, as determined under § 1.1473–1(a).

(2) *Special withholding rules*—(i) *Requirement to withhold on payments of U.S. source FDAP income to participating FFIs that are NQIs, NWPs, or NWTs.* A withholding agent that, after December 31, 2013, makes a payment of U.S. source FDAP income to a participating FFI or reporting Model 1 FFI that is an NQI receiving the payment as an intermediary, NWP, or NWT must withhold 30 percent of the payment unless the withholding is reduced under this paragraph (a)(2)(i). A withholding agent is not required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in § 1.1471–3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of § 1.1471–3(d)(4) and an FFI withholding statement that meets the requirements of § 1.1471–3(c)(3)(iii)(B)(*1*) and (*2*) and that allocates the payment or portion of the payment to payees for which no withholding is required under chapter 4. Further, a withholding agent is not required to withhold on a payment that it can reliably associate with documentation indicating that the payee is a U.S. branch of a participating FFI that is treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A).

(ii) *Residual withholding responsibility of intermediaries and flow-through entities.* An intermediary or flow-through entity that receives a withholdable payment after December 31, 2013, is required to withhold on such payment to the extent required under chapter 4. Notwithstanding the previous sentence, an intermediary or flow-through entity is not required to withhold if another withholding agent has withheld the full amount required. Further, an NQI, NWP, or NWT is not required to withhold with respect to a withholdable payment under chapter 4 if it has provided a valid intermediary withholding certificate or flow-through withholding certificate and all of the information required by § 1.1471–3(c)(3)(iii), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount. A QI's, WP's, or WT's obligation to withhold and report is determined in accordance with its QI withholding agreement, WP agreement, or WT agreement.

(iii) *Requirement to withhold if a participating FFI or registered deemed-compliant FFI makes an election to be withheld upon.* A person that otherwise would be a payee with respect to a payment but that makes an election to be withheld upon does not agree to accept primary withholding responsibility for the payment under chapter 3 or 4. Accordingly, such person cannot be treated as the payee and the withholding agent must determine whether it must withhold based on the chapter 4 status of the payee on whose behalf the person is receiving the payment. The election to be withheld upon is only available to the extent provided in paragraph (a)(2)(iii)(A) and (B) of this section. The election is not available to an entity that is required to accept primary withholding responsibility for the payment, such as a WP or WT receiving a payment of U.S. source FDAP income, or an entity that already must be withheld upon because it may not accept primary withholding responsibility for the payment and, as such, already must pass up documentation with respect to the payee to the withholding agent, such as a participating FFI that is an NQI receiving a payment of U.S. source FDAP income.

(A) *Election to be withheld upon for U.S. source FDAP income.* A withholding agent is required to withhold with respect to a payment, or portion of a payment, that is U.S. source FDAP income subject to withholding that is made after December 31, 2013, to a QI that has elected in accordance with this paragraph to be withheld upon. In such case, the withholding agent must withhold 30 percent of the portion of the payment that is allocable, pursuant to a withholding statement described in § 1.1471–3(c)(3)(iii)(B) provided by the QI, to recalcitrant account holders and nonparticipating FFIs. If no such allocation information is provided, the withholding agent must apply the presumption rules of § 1.1471–3(f) to determine the chapter 4 status of the payee. A QI that is an FFI and that makes the election to be withheld upon with respect to a payment of U.S. source FDAP income may not assume primary withholding responsibility under chapter 3 for that payment. Conversely, a QI that is an FFI and that does not make the election to be withheld upon with respect to a payment of U.S. source FDAP income is required to assume primary withholding responsibility under chapter 3 for that payment. The election to be withheld upon is only available with respect to a payment of U.S. source FDAP income if—

(*1*) The withholding agent is a participating FFI, reporting Model 1 FFI, QI, or a U.S. withholding agent;

(*2*) The person who receives the payment is a participating FFI or registered deemed-compliant FFI that acts as a QI with respect to the payment and that is not a QI branch of a U.S. financial institution;

(*3*) The person who receives the payment provides the withholding agent, at or before the time of the payment, with a valid intermediary withholding certificate with respect to the payment that notifies the withholding agent that it has elected to be withheld upon, certifies that it is not assuming primary withholding responsibility under chapter 3, and designates whether such election is made for all accounts held with the withholding agent or for the specific accounts identified on the withholding certificate; and

(*4*) The intermediary withholding certificate is accompanied by a withholding statement described in § 1.1471–3(c)(3)(iii)(B).

(B) *Election to be withheld upon for gross proceeds.* [Reserved].

(iv) *Withholding obligation of a territory financial institution.* A territory financial institution is a withholding agent with respect to a withholdable payment if it is a withholding agent under § 1.1473–1(d) with respect to

such payment. A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment has an obligation to withhold if it agrees to be treated as a U.S. person with respect to the payment for purposes of both chapter 4 and § 1.1441–1(b)(2)(iv)(A). A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment is not required to withhold under paragraph (a)(1) of this section, however, if it has provided the withholding agent that is a U.S. withholding agent, participating FFI, reporting Model 1 FFI, or QI with all of the documentation described in § 1.1471–3(c)(3)(iii) (in which it has not agreed to be treated as a U.S. person with respect to the payment), and it does not know, or have reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1474–1(d).

(v) *Withholding obligation of a foreign branch of a U.S. financial institution.* Generally, a foreign branch of a U.S. financial institution is a withholding agent and is not an FFI. However, a QI branch of a U.S. financial institution is both a withholding agent and either a participating FFI or a registered deemed-compliant FFI. Accordingly, a QI branch of a U.S. financial institution must withhold in accordance with this section in addition to meeting its obligations under either § 1.1471–4(b) and its FFI agreement or § 1.1471–5(f). Similarly, a foreign branch of a U.S. financial institution that is also a reporting Model 1 FFI is both a withholding agent and a registered deemed-compliant FFI. Accordingly, a foreign branch of a U.S. financial institution that is a reporting Model 1 FFI must withhold in accordance with this section. A foreign branch of a U.S. financial institution that is not a QI is not permitted to make an election to be withheld upon.

(vi) *Payments of gross proceeds.* [Reserved].

(3) *Coordination of withholding under sections 1471(a) and (b).* The following entities are deemed to satisfy their withholding obligations under section 1471(a) and this section: participating FFIs that comply with the withholding requirements of § 1.1471–4(b); exempt beneficial owners; section 501(c) entities described in § 1.1471–5(e)(5)(v); and nonprofit organizations described in § 1.1471–5(e)(5)(vi). See § 1.1471–5(f) for when a deemed-compliant FFI is deemed to satisfy its withholding obligations under section 1471(a) and this section.

(4) *Payments for which no withholding is required.* A withholding agent that has determined, in accordance with the documentation requirements and other rules provided in § 1.1471–3, that the payee of a withholdable payment is a foreign entity must determine whether the payment is exempt from withholding. Paragraphs (a)(4)(i) through (viii) of this section describe the circumstances in which a withholdable payment is not subject to withholding under section 1471(a) and this section.

(i) *Exception to withholding if the withholding agent lacks control, custody, or knowledge*—(A) *In general.* A withholding agent that is not related to the payee or beneficial owner has an obligation to withhold under section 1471 only to the extent that, at any time between the date that the obligation to withhold would arise (but for the provisions of this paragraph (a)(4)(i)) and the due date for filing the return on Form 1042 (including extensions) for the year in which the payment occurs, it has control over or custody of money or property owned by the payee or beneficial owner from which to withhold an amount and has knowledge of the facts that give rise to the payment. The exemption from the obligation to withhold under this paragraph (a)(4)(i) does not apply, however, to payments with respect to stock or other securities or if the lack of control or custody of money or property from which to withhold is part of a pre-arranged plan known to the withholding agent to avoid withholding under section 1471 or 1472. A withholding agent does not lack control over money or property for purposes of this paragraph (a)(4)(i) if the withholding agent directs another party to make the payment. Thus, for example, a principal does not cease to have control over a payment when it contracts with a paying agent to make the payments to its account holders in lieu of paying the account holders directly. Further, a withholding agent does not lack knowledge of the facts that give rise to a payment merely because the withholding agent does not know the character or source of the payment for U.S. tax purposes. See paragraph (a)(5) of this section for rules addressing a withholding agent's obligations when the withholding agent has knowledge of the facts that give rise to the payment, but the character or source of the payment is not known. For purposes of this paragraph (a)(4)(i), a withholding agent is related to the payee or beneficial owner if it is related within the meaning of section 482. Any exemption from withholding pursuant to this paragraph (a)(4)(i) applies without a requirement that documentation be furnished to the withholding agent. The special rules set forth in § 1.1441–2(d)(2) through (4), regarding the obligation of a withholding agent with respect to cancellation of debt, the satisfaction of a tax liability following underwithholding by a withholding agent, and amounts described in § 1.860G–3(b)(1) (regarding certain partnership allocations of REMIC net income with respect to a REMIC residual interest) also apply for purposes of chapter 4.

(B) Example. A, an individual, owns stock in DC, a domestic corporation, through a custodian, Bank 1, that is a participating FFI. A also has a money market account at Bank 2, which is also a participating FFI. DC pays a dividend of $1,000 that is deposited in A's custodial account at Bank 1. A then directs Bank 1 to transfer $1,000 to A's money market account at Bank 2. With respect to the payment of the dividend into A's custodial account with Bank 1, both DC and Bank 1 are withholding agents making a withholdable payment for which they have custody, control, and knowledge. See § 1.1473–1(a)(2)(vii)(B) and (d). Therefore, both DC and Bank 1 have an obligation to withhold on the payment unless they can reliably associate the payment with documentation sufficient to treat the respective payees as not subject to withholding under chapter 4. With respect to the wire transfer of $1,000 from A's account at Bank 1 to A's account at Bank 2, neither Bank 1 nor Bank 2 is required to withhold with respect to the transfer because neither bank has knowledge of the facts that gave rise to the payment. Even though Bank 1 is a custodian with respect to A's interest in DC and has knowledge regarding the $1,000 dividend paid to A, once Bank 1 credits the $1,000 dividend to A's account, the $1,000 becomes A's property. When A transfers the $1,000 to its account at Bank 2, this constitutes a separate payment about which Bank 1 has no knowledge regarding the type of payment made. Further, Bank 2 only has knowledge that it receives $1,000 to be credited to A's account but has no knowledge regarding the type of payment made. Accordingly, Bank 1 and Bank 2 have no withholding obligation with respect to the transfer from A's custodial account at Bank 1 to A's money market account at Bank 2.

(ii) *Exception to withholding for certain payments made prior to January 1, 2016 (transitional)*—(A) *In general.* For any withholdable payment made prior to January 1, 2016, with respect to a preexisting obligation for which a withholding agent does not have documentation indicating the payee's status as a nonparticipating FFI, the withholding agent is not required to withhold under this section and section 1471(a) unless the payee is a prima facie FFI.

(B) *Prima facie FFIs.* If the payee is a prima facie FFI, the withholding agent must treat the payee as a nonparticipating FFI beginning on July 1, 2014, until the date the withholding agent obtains documentation sufficient to establish a different chapter 4 status of the payee. A *prima facie FFI* means any payee if—

(*1*) The withholding agent has available as part of its electronically searchable information a designation for the payee as a QI or NQI; or

(*2*) For an account maintained in the United States, the payee is presumed to be a foreign entity under § 1.1471–3(f) or is documented as a foreign entity for purposes of chapter 3 or 61, and the withholding agent has recorded as part of its electronically searchable information one of the following North American Industry Classification System or Standard Industrial Classification codes indicating that the payee is a financial institution:

(*i*) Commercial Banking (NAICS 522110).

(*ii*) Savings Institutions (NAICS 522120).

(*iii*) Credit Unions (NAICS 522130).

(*iv*) Other Depositary Credit Intermediation (NAICS 522190).

(*v*) Investment Banking and Securities Dealing (NAICS 523110).

(*vi*) Securities Brokerage (NAICS 523120).

(*vii*) Commodity Contracts Dealing (NAICS 523130).

(*viii*) Commodity Contracts Brokerage (NAICS 523140).

(*ix*) Miscellaneous Financial Investment Activities (NAICS 523999).

(*x*) Open-End Investment Funds (NAICS 525910).

(*xi*) Commercial Banks, NEC (SIC 6029).

(*xii*) Branches and Agencies of Foreign Banks (branches) (SIC 6081).

(*xiii*) Foreign Trade and International Banking Institutions (SIC 6082).

(*xiv*) Asset-Backed Securities (SIC 6189).

(*xv*) Security & Commodity Brokers, Dealers, Exchanges & Services (SIC 6200).

(*xvi*) Security Brokers, Dealers & Flotation Companies (SIC 6211).

(*xvii*) Commodity Contracts Brokers & Dealers (SIC 6221).

(*xviii*) Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices (SIC 6726).

(iii) *Payments to a participating FFI.* Except to the extent provided in paragraph (a)(2)(i) of this section, a withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to a payee that the withholding agent can treat as a participating FFI in accordance with § 1.1471–3(d)(3). For this purpose, a limited branch of a participating FFI is treated as a nonparticipating FFI.

(iv) *Payments to a deemed-compliant FFI.* Except to the extent provided in paragraph (a)(2)(i) or (iii) of this section, a withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to a payee that the withholding agent can treat as a deemed-compliant FFI in accordance with § 1.1471–3(d)(4) through (7). For this purpose, a limited branch of a deemed-compliant FFI is treated as a nonparticipating FFI.

(v) *Payments to an exempt beneficial owner.* A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment to the extent that the withholding agent can reliably associate the payment with documentation to determine the portion of the payment that is allocable to an exempt beneficial owner in accordance with § 1.1471–3(d)(8). For example, a withholding agent is not required to withhold under this section on a withholdable payment made to a payee that is an exempt beneficial owner with respect to the payment, to a nonparticipating FFI to the extent that the nonparticipating FFI receives the payment as an intermediary on behalf of one or more of its account holders that are exempt beneficial owners, or to a flow-through entity to the extent that the flow-through entity receives the payment with respect to one or more of its partners, beneficiaries, or owners (as applicable) that are exempt beneficial owners. See § 1.1471–3(d)(8)(ii) for special rules for a withholding agent to determine the portion of a withholdable payment that is beneficially owned by an exempt beneficial owner in the case of a payment made to a nonparticipating FFI.

(vi) *Payments to a territory financial institution.* A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to a payee that the withholding agent can treat as a territory financial institution that beneficially owns the payment in accordance with § 1.1471–3(d)(10)(i). A withholding agent also is not required to withhold under this section on a withholdable payment that the withholding agent can treat, in accordance with § 1.1471–3(d)(10)(ii), as made to a territory financial institution that is a flow-through entity or that acts as an intermediary with respect to the payment and that has agreed to be treated as a U.S. person for purposes of chapters 3 and 4 with respect to the payment. A territory financial institution's agreement to be treated as a U.S. person for purposes of this section must be evidenced by a withholding certificate described in § 1.1471–3(c)(3)(iii)(F) furnished by the territory financial institution to the withholding agent.

(vii) *Payments to an account held with a clearing organization with FATCA-compliant membership.* [Reserved].

(viii) *Payments to certain excepted accounts.* A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to an account described in § 1.1471–5(b)(2).

(5) *Withholding requirements if source or character of payment is unknown*—(i) *General rule.* If a withholding agent has knowledge of the facts that give rise to a payment but is unable to determine at the time of payment the character of the payment sufficiently to determine whether it is a withholdable payment, such payment must be treated as a withholdable payment. If a withholding agent has knowledge of the facts that give rise to a payment but is unable to determine at the time of payment the source of the payment, such payment must be treated as U.S. source income. For example, if a withholding agent does not know at the time of payment the amount of the payment that is a withholdable payment, because that calculation depends on facts that are not known at the time of payment (for example, because the withholding agent does not know whether services were performed in the United States or whether the payment constitutes income to the recipient) the withholding agent must withhold an amount necessary to ensure that the amount withheld is not less than 30 percent of the amount that could be a withholdable payment, subject to the limitation that the withheld amount must not exceed 30 percent of the amount paid. Notwithstanding this paragraph (a)(5), a withholding agent may presume a payment to be effectively connected with the conduct of a trade or business in the United States, and thus, not a withholdable payment, if it can do so under § 1.1471–3(f)(6) (regarding payments to certain U.S. branches).

(ii) *Optional escrow procedure.* With respect to a payment described in paragraph (a)(5) of this section, the withholding agent may elect to retain 30 percent of the payment to hold in escrow until the earlier of the date that the amount of the withholdable

payment can be determined or one year from the date the amount is placed in escrow, at which time either the withholding becomes due under this section or, to the extent that it is determined that the payment is of a type for which no withholding is required, the escrowed amount must be paid to the payee.

(b) *Grandfathered obligations*—(1) *Grandfathered treatment of outstanding obligations.* Notwithstanding § 1.1473–1(a), a withholdable payment does not include any payment made under a grandfathered obligation described in paragraph (b)(2)(i)(A) of this section, or any gross proceeds from the disposition of such an obligation. Notwithstanding § 1.1471–5(h), a foreign passthru payment does not include any payment made under a grandfathered obligation described in paragraph (b)(2)(i)(A) or (B) of this section, or any gross proceeds from the disposition of such an obligation. A premium paid with regard to an insurance contract or annuity contract that is a grandfathered obligation is treated as a payment made under a grandfathered obligation.

(2) *Definitions.* The following definitions apply solely for purposes of this paragraph (b).

(i) *Grandfathered obligation*—(A) The term *grandfathered obligation* means—

(*1*) Any obligation outstanding on January 1, 2014;

(*2*) Any obligation that gives rise to a withholdable payment solely because the obligation is treated as giving rise to a dividend equivalent pursuant to section 871(m) and the regulations thereunder, provided that the obligation is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalents; and

(*3*) Any agreement requiring a secured party to make a payment with respect to, or to repay, collateral posted to secure a grandfathered obligation. If collateral (or a pool of collateral) secures both grandfathered obligations and obligations that are not grandfathered, the collateral posted to secure the grandfathered obligations must be determined by allocating (pro rata by value) the collateral (or each item comprising the pool of collateral) to all outstanding obligations secured by the collateral (or pool of collateral).

(B) Solely for purposes of a foreign passthru payment, the term *grandfathered obligation* also includes any obligation that is executed on or before the date that is six months after the date on which final regulations defining the term foreign passthru payment are filed with the **Federal Register**.

(ii) *Obligation*—(A) Except as otherwise provided in paragraph (b)(2)(ii)(B) of this section, the term *obligation* means any legally binding agreement or instrument. An obligation for purposes of this paragraph (b)(2)(i) includes, for example—

(*1*) A debt instrument (for example, a bond, guaranteed investment certificate, or term deposit);

(*2*) An agreement to extend credit for a fixed term (for example, a line of credit or a revolving credit facility), provided that the agreement as of its issue date fixes the material terms (including a stated maturity date) under which the credit will be provided;

(*3*) A derivatives transaction entered into between counterparties under an ISDA Master Agreement that is evidenced by a confirmation;

(*4*) A life insurance contract under which the entire contract value is payable no later than upon the death of the individual(s) insured under the contract; and

(*5*) An immediate annuity contract payable for a period certain or for the life of the annuitant.

(B) An *obligation* for purposes of this paragraph (b)(2)(ii) does not include any legal agreement or instrument that—

(*1*) Is treated as equity for U.S. tax purposes;

(*2*) Lacks a stated expiration or term (for example, a savings deposit or demand deposit, a deferred annuity contract, or a life insurance contract or annuity contract that permits a substitution of a new individual as the insured or as the annuitant under the contract);

(*3*) Is a brokerage agreement, custodial agreement, investment linked insurance contract, investment linked annuity contract, or similar agreement to hold financial assets for the account of others and to make and receive payments of income and other amounts with respect to such assets; or

(*4*) Is a master agreement that merely sets forth standard terms and conditions that are intended to apply to a series of transactions between parties but that does not set forth all of the specific terms necessary to conclude a particular transaction.

(iii) *Date outstanding.* Except as provided in the following sentence, an obligation that constitutes indebtedness for U.S. tax purposes is outstanding on the date provided in paragraph (b)(2)(i) if it has an issue date before such date. In all other cases, including an agreement described in paragraph (b)(2)(ii)(A)(*2*) of this section, an obligation is outstanding on the date provided in paragraph (b)(2)(i) if a legally binding agreement establishing the obligation was executed between the parties to the agreement before such date. Any material modification of an outstanding obligation will result in the obligation being treated as newly issued or executed as of the effective date of such modification.

(iv) *Material modification.* In the case of an obligation that constitutes indebtedness for U.S. tax purposes, a material modification is any significant modification of the debt instrument as defined in § 1.1001–3(e). In all other cases, whether a modification of an obligation is material is determined based on the facts and circumstances.

(3) *Application to flow-through entities*—(i) *Partnerships.* A payment made under a grandfathered obligation includes a payment made to a partnership with respect to such obligation and a payment made with respect to a partnership's disposition of such obligation. A payment made under a grandfathered obligation also includes the income from such obligation that is includible in the gross income of a partner with respect to a capital or profits interest in the partnership and the gross proceeds allocated to a partner from the disposition of such obligation as determined under § 1.1473–1(a)(5)(vii).

(ii) *Simple trusts.* A payment made under a grandfathered obligation includes a payment made to a simple trust with respect to such obligation, including a payment made with respect to a simple trust's disposition of such obligation. A payment made under a grandfathered obligation also includes income from such obligation that is includible in the income of a beneficiary and further includes a beneficiary's share of the gross proceeds from a disposition of such obligation as determined under § 1.1473–1(a)(5)(vii).

(iii) *Grantor trusts.* A payment made under a grandfathered obligation includes a payment made to a grantor trust with respect to such obligation, including a payment made with respect to the trust's disposition of such obligation. A payment made under a grandfathered obligation also includes income from such obligation that is includible in the gross income of a person that is treated as an owner of the trust and the gross proceeds from the disposition of such obligation to the extent such owner is treated as owning the portion of the trust that consists of the obligation.

(4) *Determination by withholding agent of grandfathered treatment*—(i) *In general.* A withholding agent other than the issuer of the obligation (or agent of the issuer) may, absent actual knowledge, rely on a written statement

by the issuer of the obligation to determine if such obligation meets the requirements for grandfathered treatment provided under this paragraph (b).

(ii) *Determination of material modification.* For purposes of paragraph (b)(2)(iv) of this section (defining material modification), a withholding agent is required to treat a modification of an obligation as material only if the withholding agent knows or has reason to know that a material modification has occurred with respect to the obligation. A withholding agent, other than the issuer of the obligation (or agent of the issuer), has reason to know that a material modification has occurred with respect to an obligation if the withholding agent receives a disclosure from the issuer of the obligation stating that there has been a material modification to such obligation.

(iii) *Record retention.* A withholding agent that relies on a document provided by the issuer of an obligation as described in paragraph (b)(4)(i) or (ii) of this section must retain such document in its records for the applicable period of limitations on assessment and collection with respect to amounts paid under the obligation or from disposition of the obligation.

(c) *Effective/applicability date.* This section generally applies on January 28, 2013. For other dates of applicability, see §§ 1.1471–2(a)(1); 1.1471–2(a)(2)(i), (ii), (iii)(A); 1.1471–2(a)(4)(ii).

■ **Par. 7.** Section 1.1471–3 is added to read as follows:

§ 1.1471–3 Identification of payee.

(a) *Payee defined*—(1) *In general.* Except as otherwise provided in this paragraph (a), for purposes of chapter 4 a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount.

(2) *Payee with respect to a financial account.* For purposes of payments made to a financial account and except as otherwise provided in paragraph (a)(3) of this section, the payee is the holder of the financial account.

(3) *Exceptions*—(i) *Certain foreign agents or intermediaries*—(A) Except as otherwise provided in paragraphs (a)(3)(iv) and (vi) of this section (applicable to territory financial institutions and certain U.S. branches), a foreign person that is acting as an agent or intermediary with respect to a payment in accordance with paragraph (b)(1) of this section is not the payee if such foreign person is—

(*1*) An NFFE, unless the NFFE is a QI that has assumed primary withholding responsibility; or

(*2*) In the case of a payment of U.S. source FDAP income, a participating FFI, deemed-compliant FFI, or restricted distributor, unless the participating FFI, deemed-compliant FFI, or restricted distributor is a QI that has assumed primary withholding responsibility.

(B) In the case of an agent or intermediary described in paragraph (a)(3)(i)(A) of this section, the payee is the person or persons for whom the agent or intermediary collects the payment. Thus, for example, the payee of a payment of U.S. source FDAP income that the withholding agent can reliably associate with a withholding certificate from a QI that does not assume primary withholding responsibility with respect to the payment under chapter 3, or a payment to a participating FFI that is an NQI, is the person or persons for whom the QI or NQI acts.

(ii) *Foreign flow-through entity*—(A) A foreign entity that is a flow-through entity is a payee with respect to a payment only if the flow-through entity is—

(*1*) An FFI that is not a participating FFI or deemed-compliant FFI, or restricted distributor receiving a payment of U.S. source FDAP income;

(*2*) An excepted NFFE that is not acting as an agent or intermediary with respect to the payment;

(*3*) A WP or WT that is not acting as an agent or intermediary with respect to the payment; or

(*4*) Receiving income that is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States, or receiving a payment of gross proceeds from the sale of property that can produce income that is effectively connected with the conduct of a trade or business in the United States and that is excluded from the definition of a withholdable payment under § 1.1473–1(a)(4).

(B) A withholding agent that makes a withholdable payment to a flow-through entity that is not described in paragraphs (a)(3)(ii)(A)(*1*) through (*3*) of this section will be required to treat the partner, beneficiary, or owner (as applicable) as the payee (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not described in paragraphs (a)(3)(ii)(A)(*1*) through (*3*)).

(iii) *U.S. intermediary or agent of a foreign person.* A withholding agent that makes a withholdable payment to a U.S. person and has actual knowledge that the person receiving the payment is acting as an intermediary or agent of a foreign person with respect to the payment must treat such foreign person, and not the intermediary or agent, as the payee of such payment. Notwithstanding the previous sentence, a withholding agent that makes a withholdable payment to a U.S. financial institution that is acting as an intermediary or agent with respect to the payment on behalf of one or more foreign persons may treat the U.S. financial institution as the payee if the withholding agent does not have reason to know that the U.S. financial institution will not comply with its obligations to withhold under sections 1471 and 1472.

(iv) *Territory financial institution.* A withholding agent that makes a withholdable payment to a territory financial institution that is a flow-through entity or is acting as an intermediary or agent with respect to the payment may treat the territory financial institution as the payee only if the territory financial institution has agreed (as evidenced by a withholding certificate described in paragraphs (c)(3)(iii)(A) and (F) of this section) to be treated as a U.S. person with respect to the payment for purposes of both chapters 3 and 4. In all other cases, the withholding agent must treat as the payee the partner, beneficiary, or owner (as applicable) of the territory financial institution that is a flow-through entity (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not described in paragraphs (a)(3)(ii)(A)(*1*) through (*3*)) or the person on whose behalf the territory financial institution is acting.

(v) *Disregarded entity or branch.* Except as otherwise provided in paragraph (a)(3)(v) through (vii) of this section, a withholding agent that makes a withholdable payment to an entity that is disregarded for U.S. federal tax purposes under § 301.7701–2(c)(2)(i) of this chapter as an entity separate from its single owner must treat the single owner as the payee. Notwithstanding the previous sentence, a withholding agent that makes a payment to a limited branch will be required to treat the payment as being made to a nonparticipating FFI.

(vi) *U.S. branch of certain foreign banks or foreign insurance companies.* A withholdable payment to a U.S. branch of either a participating FFI or registered deemed-compliant FFI is a payment to a U.S. person if the U.S. branch is treated as a U.S. person for purposes of § 1.1441–1(b)(2)(iv). In such case the U.S. branch is treated as the payee. A U.S. branch, however, that is treated as a U.S. person under § 1.1441–1(b)(2)(iv) is not treated as a U.S. person for purposes of the withholding certificate it may provide to a

withholding agent for purposes of chapter 4. Accordingly, a U.S. branch of either a participating FFI or registered deemed-compliant FFI must furnish a withholding certificate on a Form W–8 to certify its chapter 4 status (and not a Form W–9). See also paragraph (f)(6) for the rules under which a withholding agent can presume a payment constitutes income that is effectively connected with a U.S. trade or business. A U.S. branch of either a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person for purposes of chapter 3 may not make an election to be withheld upon, as described in section 1471(b)(3) and § 1.1471–2(a)(2)(iii), for purposes of chapter 4. See § 1.1471–4(c)(2)(v) for the rule requiring a U.S. branch to apply the due diligence rules applicable to a U.S. withholding agent in lieu of those otherwise applicable to a participating FFI. See § 1.1471–4(d) for rules for when a U.S. branch of a participating FFI is required to report as a U.S. person.

(vii) *Foreign branch of a U.S. person.* A payment to a foreign branch of a U.S. person is generally a payment to a U.S. payee. However, a payment to a foreign branch of a U.S. financial institution will be treated as a payment to an FFI if the foreign branch is a QI that is acting as an intermediary with respect to the payment. Therefore, a foreign branch that is a QI will provide the withholding agent with an intermediary withholding certificate and the withholding agent will report the payment as having been made to the foreign branch on a Form 1042–S.

(b) *Determination of payee's status.* Except as otherwise provided in this section, a withholding agent must base its determination of the chapter 4 status of a payee on documentation that the withholding agent can reliably associate with such payment. If a withholding agent makes a payment to a person that is not the payee, the withholding agent will be required to determine the chapter 4 status of each intermediary or flow-through entity in the payment chain until the withholding agent is able to identify the payee. Paragraph (c) of this section provides rules for when a withholding agent can reliably associate a payment with appropriate documentation. Paragraph (d) of this section provides documentation requirements applicable to each class of payees, including exceptions for payments made with respect to offshore obligations or preexisting obligations. Paragraph (e) provides standards for determining when a withholding agent will be considered to have reason to know that a claim of exemption from withholding is unreliable or incorrect. Paragraph (f) of this section provides presumptions that apply for purposes of determining a payee's chapter 4 status in the absence of documentation or if the documentation provided is unreliable or incorrect.

(1) *Determining whether a payment is received by an intermediary.* A withholding agent must treat the person who receives a payment as an intermediary if it can reliably associate the payment with a valid intermediary withholding certificate on which the person who receives the payment claims to be a QI or NQI. A U.S. person's foreign branch that is acting in its capacity as a QI is treated as a foreign intermediary. A withholding agent that makes a payment with respect to an offshore obligation must also treat the person who receives the payment as an intermediary if the person has provided written notification, whether or not such notification is signed, that it accepts the payment on behalf of another person or persons. A withholding agent may rely on the type of certificate furnished as determinative of whether the person who receives the payment is an intermediary, unless the withholding agent knows or has reason to know that the certificate is incorrect. For example, a withholding agent that receives a beneficial owner withholding certificate from an FFI may treat the FFI as the beneficial owner unless it has information in its records that would indicate otherwise or the certificate contains information that is not consistent with beneficial owner status (for example, sub-account numbers that do not correspond to accounts maintained by the withholding agent for such person or names of one or more persons other than the person submitting the withholding certificate). If the FFI receives a payment in part as a beneficial owner and in part as an intermediary, the withholding agent may request that the FFI furnish two certificates, that is, a beneficial owner certificate for the amounts it receives as a beneficial owner, and an intermediary withholding certificate for the amounts it receives as an intermediary. A withholding agent that cannot reliably associate a payment with documentation sufficient to treat the person who receives the payment as an intermediary or as other than an intermediary pursuant to this paragraph (b)(1) must follow the presumption rules set forth in paragraph (f)(5) of this section to determine whether it must treat the person who receives the payment as an intermediary. A determination that a payment is made to an intermediary under this paragraph (b)(1) is not a determination that the payment can be reliably associated with documentation. See paragraph (c)(2) of this section for rules on reliably associating a payment with documentation if such payment is made through an intermediary.

(2) *Determination of entity type.* A person's entity classification for purposes of chapter 4 is the person's entity classification for U.S. federal income tax purposes. Thus, for example, an entity that is disregarded as a legal entity in its country of organization or an arrangement that does not have a legal personality and is not a juridical person in the country in which it was organized will be treated as an entity for purposes of chapter 4 if it is an entity for U.S. federal income tax purposes. A withholding agent may rely upon a person's entity classification contained in a valid Form W–8 or W–9 if the withholding agent has no reason to know that the entity classification is incorrect. A withholding agent that makes a payment with respect to an offshore obligation may also rely upon a written notification provided by the person who receives the payment, regardless of whether such notification is signed, that indicates the person's entity classification (other than as a QI, WP, or WT) unless the withholding agent has reason to know that the entity classification indicated by the person who receives the payment is incorrect. A withholding agent may not rely on a person's claim of classification other than as a corporation if the person's name indicates that the person is a per se corporation described in § 301.7701–2(b)(8) of this chapter unless the certificate or written statement contains a statement that the person is a grandfathered per se corporation described in § 301.7701–2(b)(8) and that its grandfathered status has not been terminated.

(3) *Determination of whether the payment is made to a QI, WP, or WT.* A withholding agent may treat the person who receives a payment as a QI, WP, or WT if the withholding agent can reliably associate the payment with a valid Form W–8IMY, as described in paragraph (c)(3)(iii) of this section, that indicates that the person who receives the payment is a QI, WP, or WT, and the form contains the person's GIIN, in the case of a QI or a WP or WT that is an FFI, or the person's QI–EIN, WP–EIN, or WT–EIN in the case of a QI, WP, or WT that is not an FFI.

(4) *Determination of whether the payee is receiving effectively connected income.* A withholding agent may treat a payment as being made to a payee that is receiving income that is effectively

connected with a trade or business in the United States, or gross proceeds from the sale of property that can produce income that is effectively connected with the conduct of a trade or business in the United States, if it can reliably associate the payment with a valid Form W–8ECI described in paragraph (c)(3)(v) of this section or if it can do so under the presumption rule in paragraph (f)(6) of this section.

(c) *Rules for reliably associating a payment with a withholding certificate or other appropriate documentation*—(1) *In general.* A withholding agent can reliably associate a withholdable payment with valid documentation if, prior to the payment, it has obtained (either directly or through an agent) valid documentation appropriate to the payee's chapter 4 status as described in paragraph (d) of this section, it can reliably determine how much of the payment relates to the valid documentation, and it does not know or have reason to know that any of the information, certifications, or statements in, or associated with, the documentation are unreliable or incorrect. Thus, a withholding agent cannot reliably associate a withholdable payment with valid documentation provided by a payee to the extent such documentation appears unreliable or incorrect with respect to the claims made, or to the extent that information required to allocate all or a portion of the payment to each payee is unreliable or incorrect. A withholding agent may rely on information and certifications contained in withholding certificates or other documentation without having to inquire into the truthfulness of the information or certifications, unless it knows or has reason to know that the information or certifications are untrue. A withholding agent may rely upon the same documentation for purposes of both chapters 3 and 4 provided the documentation is sufficient to meet the requirements of each chapter. Alternatively, a withholding agent may elect to rely upon the presumption rules of paragraph (f) of this section in lieu of obtaining documentation from the payee.

(2) *Reliably associating a payment with documentation if a payment is made through an intermediary or flow-through entity that is not the payee*—(i) *In general.* A withholding agent that makes a payment to a foreign intermediary or foreign flow-through entity that is not the payee under paragraph (a) of this section can reliably associate the payment with valid documentation if, in addition to the documentation described in paragraph (d) of this section that is relevant to each payee, the withholding agent also has obtained a valid Form W–8IMY, described in paragraph (c)(3)(iii) of this section, from the intermediary or flow-through entity (and, with respect to a payment made through a chain of intermediaries or flow-through entities, has received a valid Form W–8IMY from each intermediary or flow-through entity in that chain). An intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI receiving a payment of U.S. source FDAP income may, in lieu of providing the withholding agent with documentation for each payee, provide pooled allocation information to the extent and in the manner permitted by paragraph (c)(3)(iii)(B)(*2*) of this section.

(ii) *Exception to entity account documentation rules for an offshore account of an intermediary or flow-through entity.* In the case of an offshore account held by an intermediary or flow-through entity not receiving a payment of U.S. source FDAP income, an FFI may, in lieu of obtaining a withholding certificate, reliably associate such account with valid documentation if the FFI has obtained a written statement certifying as to the account holder's chapter 4 status and stating that the account holder is a flow-through entity or is acting as an intermediary with respect to the payment. In such case, the intermediary or flow-through entity will also be required to provide the withholding statement that generally accompanies the Form W–8IMY, designating the payees and the appropriate amount that should be allocated to each payee, and valid documentation for each payee. If no such withholding statement or underlying documentation is provided, the payment will be treated as made to a nonparticipating FFI.

(3) *Requirements for validity of certificates*—(i) *Form W–9.* A valid Form W–9, or a substitute form, must meet the requirements prescribed in § 31.3406(h)-3 of this chapter, including the requirement that the form contain the payee's name and TIN, and be signed and dated under penalties of perjury by the payee or a person authorized to sign for the payee pursuant to sections 6061 through 6063 and the regulations thereunder. A foreign person, including a U.S. branch of a foreign person that is treated as a U.S. person under § 1.1441–1(b)(2)(iv), or a foreign branch of a U.S. financial institution that is a QI, may not provide a Form W–9.

(ii) *Beneficial owner withholding certificate (Form W–8BEN).* A beneficial owner withholding certificate includes a Form W–8BEN (or a substitute form) and such other form as the IRS may prescribe. A beneficial owner withholding certificate is valid only if its validity period has not expired, it is signed under penalties of perjury by a person with authority to sign for the person whose name is on the form, and it contains—

(A) The person's name, permanent residence address, and TIN (if required);

(B) A certification that the person is not a U.S. citizen (if the person is an individual) or a certification of the country under the laws of which the person is created, incorporated, or governed (for a person other than an individual);

(C) The entity classification of the person;

(D) The chapter 4 status of the person; and

(E) Such other information required under paragraph (d) of this section applicable to the chapter 4 status selected or otherwise required by the regulations under section 1471 or 1472, or by the form or its accompanying instructions in addition to, or in lieu of, the information described in this paragraph (c)(3)(ii).

(iii) *Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W–8IMY)*—(A) *In general.* A withholding certificate of an intermediary, flow-through entity, or U.S. branch is valid for purposes of chapter 4 only if it is furnished on a Form W–8IMY, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person with authority to sign for the person named on the form, its validity period has not expired, and it contains the following information, statements, and certifications—

(*1*) The name and permanent residence address of the person.

(*2*) The country under the laws of which the person is created, incorporated, or governed.

(*3*) The person's entity classification for U.S. tax purposes.

(*4*) The person's chapter 4 status.

(*5*) A GIIN, in the case of a participating FFI or a registered deemed-compliant FFI (including a U.S. branch of such an entity), or an EIN in the case of a QI, WP, or WT that is not an FFI.

(*6*) In the case of an intermediary certificate, a certification that, with respect to accounts listed on the withholding statement, the intermediary is not acting for its own account.

(*7*) With respect to a withholding certificate of a QI, a certification that it is acting as a QI with respect to the accounts listed on the withholding statement.

(*8*) In the case of a participating FFI or registered deemed-compliant FFI (including a U.S. branch of either such entities that is not treated as a U.S. person) that is an NQI, NWP, NWT, or a QI that makes an election to be withheld upon, an FFI withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(*1*) and (*2*) of this section.

(*9*) In the case of a territory financial institution that does not agree to be treated as a U.S. person or a U.S. branch that is not a U.S. branch of a participating FFI, registered deemed-compliant FFI, or nonparticipating FFI, a chapter 4 withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(*1*) and (*3*) of this section.

(*10*) In the case of an NFFE or certified deemed-compliant FFI that is an NQI, NWP, or NWT and is not the payee, a chapter 4 withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(*1*) and (*3*) of this section.

(*11*) In the case of a nonparticipating FFI receiving a payment on behalf of one or more exempt beneficial owners, an exempt beneficial owner withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(*1*) and (*4*) of this section.

(*12*) Any other information, certifications, or statements as may be required by the form or its accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph.

(B) *Withholding statement*—(*1*) *In general.* A withholding statement forms an integral part of the withholding certificate and the penalties of perjury statement provided on the withholding certificate applies to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which the person submitting the form and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by the person submitting the withholding certificate and the electronic system must document all occasions of user access that result in the submission or modification of withholding statement information. In addition, the electronic system must be capable of providing a hard copy of all withholding statements provided electronically. The withholding statement must be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapter 4. A withholding agent will be liable for tax, interest, and penalties under § 1.1474–1(a) to the extent it does not follow the presumption rules of paragraph (f) of this section for any payment, or portion thereof, for which a withholding statement is required and the withholding agent does not have a valid withholding statement prior to making a payment. A withholding agent that is making a payment for which a withholding statement is also required for purposes of chapter 3, may only rely upon the withholding statement if, in addition to providing the information required by paragraph (c)(3)(iii)(B) of this section, the withholding statement also includes all of the information required for purposes of chapter 3 and specifies the chapter 4 status of each payee or pool of payees identified on the withholding statement for purposes of chapter 3.

(*2*) *Special requirements for an FFI withholding statement.* An FFI withholding statement must include either pooled information that indicates the portion of the payment attributable to U.S. persons, recalcitrant account holders, nonparticipating FFIs, and any other class of payees that is not subject to withholding under chapter 4; or, when payee specific information is provided for purposes of chapter 3, an allocation of the payment to each payee with the payee's chapter 4 status. Regardless of whether the FFI withholding statement provides information on a pooled basis or on a payee specific basis, the withholding statement must identify each intermediary or flow-through entity that receives the payment on behalf of a payee with such entity's chapter 4 status and GIIN, when applicable. An FFI withholding statement must also include any other information that the withholding agent reasonably requests in order to fulfill its obligations under chapter 4.

(*3*) *Special requirements for a chapter 4 withholding statement.* A chapter 4 withholding statement must contain the name, address, TIN (if any), entity type, and chapter 4 status of each payee, the amount allocated to each payee, a valid withholding certificate or other appropriate documentation sufficient to establish the chapter 4 status of each payee, and each intermediary or flow-through that receives the payment on behalf of the payee, in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. Notwithstanding the prior sentence, a chapter 4 withholding statement is permitted to provide pooled allocation information with respect to payees that are treated as nonparticipating FFIs.

(*4*) *Special requirements for an exempt beneficial owner withholding statement.* An exempt beneficial owner withholding statement must include the name, address, TIN (if any), entity type, and chapter 4 status of each exempt beneficial owner on behalf of which the nonparticipating FFI is receiving the payment, the amount of the payment allocable to each exempt beneficial owner, a valid withholding certificate or other documentation sufficient to establish the chapter 4 status of each exempt beneficial owner in accordance with paragraph (d) of this section, and any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4. The withholding statement must allocate the remainder of the payment that is not allocated to an exempt beneficial owner to the nonparticipating FFI receiving the payment.

(C) *Failure to provide allocation information.* A withholding certificate that fails to provide allocation information or any of the required documentation for one or more of the payees will not be treated as invalid with respect to the persons for whom valid documentation and allocation information is properly provided. The portion of the payment that is not reliably associated with underlying documentation or that is not properly allocated will be treated in accordance with the presumption rules set forth in paragraph (f) of this section. For example, assume a withholding certificate that is provided by a participating FFI that is an NQI includes an FFI withholding statement that indicates that 50 percent of the payment is allocable to payees that are exempt for purposes of chapter 4 but does not allocate the remaining 50 percent of the payment for purposes of chapter 4. In such case, the withholding agent may treat 50 percent of the payment as exempt from chapter 4 and the remaining 50 percent that was not allocated will be treated, under the presumption rules set forth in paragraph (f) of this section, as made to a pool of payees that are nonparticipating FFIs.

(D) *Special rules applicable to a withholding certificate of a QI that assumes primary withholding responsibility under chapter 3.* A QI that assumes primary withholding responsibility under chapter 3 for a payment may not make an election to be withheld upon, as described in § 1.1471–2(a)(2)(iii), with respect to that payment. Thus, if a QI assumes primary withholding responsibility under

chapter 3 with respect to a payment of U.S. source FDAP income, in addition to the other requirements described in paragraph (c)(3)(iii)(A) of this section, a withholding agent can reliably associate the payment with a valid withholding certificate only when the QI has also indicated on the intermediary withholding certificate that it will assume primary withholding responsibility for that payment for purposes of chapter 4.

(E) *Special rules applicable to a withholding certificate of a QI that does not assume primary withholding responsibility under chapter 3.* A QI that does not assume primary withholding responsibility under chapter 3 with respect to a payment of U.S. source FDAP income will be required to make the election to be withheld upon with respect to that payment. Thus, if a QI does not assume primary withholding responsibility under chapter 3, a withholding agent can reliably associate a payment of U.S. source FDAP income with a valid withholding certificate only when, in addition to the other information required by paragraph (c)(3)(iii)(A) of this section, the withholding certificate indicates that the QI does not assume primary withholding responsibility for that payment for purposes of chapter 4.

(F) *Special rules applicable to a withholding certificate of a territory financial institution that agrees to be treated as a U.S. person.* A withholding agent may reliably associate a payment with an intermediary withholding certificate or flow-through withholding certificate of a territory financial institution that agrees to be treated as a U.S. person if, in addition to the other information required by paragraph (c)(3)(iii)(A) of this section, the certificate contains an EIN of the territory financial institution and a certification that the territory financial institution agrees to be treated as a U.S. person and accepts primary withholding responsibility with respect to the payment for purposes of both chapters 3 and 4.

(G) *Special rules applicable to a withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person.* A withholding agent may reliably associate a payment with an intermediary withholding certificate or a flow-through withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person if, in addition to the information required by paragraph (c)(3)(iii)(A) of this section, the certificate indicates that the institution has not agreed to be treated as a U.S. person for purposes of chapter 4 and the institution provides a withholding statement described in paragraphs (c)(3)(iii)(B)(*1*) and (*3*) of this section.

(H) *Special rules applicable to a withholding certificate of a U.S. branch treated as a U.S. person.* A withholding agent may reliably associate a payment with a withholding certificate of a U.S. branch that is treated as a U.S. person for purposes of § 1.1441–1(b)(2)(iv) if, in addition to the other information required by paragraph (c)(2)(iii)(A) of this section; the certificate contains the EIN of the U.S. branch; the GIIN of the U.S. branch; and a certification that the U.S. branch is described in paragraph § 1.1441–1(b)(2)(iv) and, accordingly, is required to accept primary withholding responsibility with respect to the payment for purposes of both chapters 3 and 4.

(iv) *Certificate for exempt status (Form W–8EXP).* A Form W–8EXP is valid only if it contains the name, address, and chapter 4 status of the payee, the relevant certifications or documentation, and any other requirements indicated in the instructions to the form, and is signed under penalties of perjury by a person with authority to sign for the payee.

(v) *Certificate for effectively connected income (Form W–8ECI).* A Form W–8ECI is valid only if, in addition to meeting the requirements in the instructions to the form, it contains the name, address, and TIN of the payee (other than a GIIN), represents that the amounts for which the certificate is furnished are effectively connected with the conduct of a trade or business in the United States and are includable in the payee's gross income for the taxable year (or are gross proceeds from the sale of property that can produce income that is effectively connected with the conduct of a trade or business in the United States), and is signed under penalties of perjury by a person with authority to sign for the payee.

(4) *Requirements for written statements.* A written statement is a statement by the payee, or other person receiving the payment, that provides the person's chapter 4 status and any other information reasonably requested by the withholding agent to fulfill its obligations under chapter 4 with respect to the payment, such as whether the person is receiving the payment as a beneficial owner, intermediary, or flow-through entity. A written statement is valid only if it is provided by a person with respect to an offshore obligation, contains the name of the person, the person's address, the certifications relevant to the person's chapter 4 status (as contained on a withholding certificate), any additional information required with respect to the chapter 4 status claimed as provided under paragraph (d) of this section (for example, a GIIN), and a signed and dated certification that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. A written statement may be submitted in any form that is acceptable to the withholding agent, including a statement made as part of the account opening documentation. A written statement may be used in lieu of a withholding certificate only to the extent provided under § 1.1471–3(d), as applicable to the chapter 4 status claimed.

(5) *Requirements for documentary evidence.* Documentary evidence with respect to a payee is only reliable if it contains sufficient information to support the payee's claim of chapter 4 status.

(i) *Foreign status.* Acceptable documentary evidence supporting a claim of foreign status includes the following types of documentation if the documentation contains a permanent residence address for the person named on the documentation (or indicates the country in which a person that is an individual is a resident or citizen or the country in which a person that is an entity has a permanent residence or is incorporated or organized, if the withholding agent has otherwise obtained a current permanent residence address for the person)—

(A) *Certificate of residence.* A certificate of residence issued by an appropriate tax official of the country in which the payee claims to be a resident that indicates that the payee has filed its most recent income tax return as a resident of that country;

(B) *Individual government identification.* With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that is typically used for identification purposes;

(C) *QI documentation.* With respect to an account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as referenced in § 1.1441–1(e)(5)(iii)), any of the documents other than a Form W–8 or W–9 referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or entities;

(D) *Entity government documentation.* With respect to an entity, any official documentation issued by an authorized

government body (for example, a government or agency thereof, or a municipality); and

(E) *Third-party credit report.* For a payment made with respect to an offshore obligation to an individual, a third-party credit report that is obtained pursuant to the conditions described in § 1.1471–4(c)(4)(ii).

(ii) *Chapter 4 status.* Acceptable documentary evidence supporting an entity's claim of chapter 4 status includes—

(A) *General documentary evidence.* With respect to an entity other than a participating FFI or registered deemed-compliant FFI, any organizational document (such as articles of incorporation or a trust agreement), financial statement, third-party credit report, letter from a government agency, or statement from a government Web site, agency, or registrar (such as an SEC report) to the extent permitted in paragraphs (d) and (e) of this section;

(B) *Preexisting account documentary evidence.* With respect to a preexisting obligation of an entity, any standardized industry code or any classification in the withholding agent's records with respect to the payee that was determined based on documentation supplied by the payee (or other person receiving the payment) and that was recorded by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent was formed or organized, to the extent permitted by paragraph (d) of this section and provided there is no U.S. indicia associated with the payee for which appropriate curing documentation has not been obtained as set forth in paragraph (e) of this section; and

(C) *Payee-specific documentary evidence.* A letter from an auditor or attorney with a location in the United States that is not related to the withholding agent or payee and is subject to the authority of a regulatory body that governs the auditor's or attorney's review of the chapter 4 status of the payee, any bankruptcy filing, corporate resolution, copy of a stock market index or other document to the extent permitted in the specific payee documentation requirements in paragraph (d) and (e) of this section.

(6) *Applicable rules for withholding certificates, written statements, and documentary evidence.* The provisions in this paragraph (c)(6) describe standards generally applicable to withholding certificates (Forms W–8 or substitute forms), written statements, and documentary evidence furnished to establish the payee's chapter 4 status. These provisions do not apply to Forms W–9 (or their substitutes). For corresponding provisions regarding the Form W–9 (or a substitute Form W–9), see section 3406 and the regulations thereunder.

(i) *Who may sign the withholding certificate or written statement.* A withholding certificate (including an acceptable substitute) or written statement may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person whose name is on the certificate or written statement, as provided in sections 6061 through 6063 and the regulations thereunder. A person authorized to sign a withholding certificate or written statement includes an officer or director of a corporation, a partner of a partnership, a trustee of a trust, an executor of an estate, any foreign equivalent of the former titles, and any other person that has been provided written authorization by the individual or entity named on the certificate or written statement to sign documentation on such person's behalf.

(ii) *Period of validity*—(A) *General rule.* Except as provided otherwise in paragraphs (c)(6)(ii)(B) and (C), a withholding certificate or written statement will remain valid until the last day of the third calendar year following the year in which the withholding certificate or written statement is signed. Documentary evidence is generally valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent. Nevertheless, documentary evidence that contains an expiration date may be treated as valid until that expiration date if doing so would provide a longer period of validity than the three-year period. Notwithstanding the validity periods permitted by paragraphs (c)(6)(ii)(A) through (D) of this section, a withholding certificate, written statement, and documentary evidence will cease to be valid if the withholding agent has knowledge of a change in circumstances that makes the information on the documentation incorrect. Therefore, a withholding agent is required to institute procedures to ensure that any change to the customer master files that constitutes a change in circumstances described in paragraph (c)(6)(ii)(E) of this section is identified by the withholding agent. In addition, a withholding agent is required to notify any person providing documentation of the person's obligation to notify the withholding agent of a change in circumstances.

(B) *Indefinite validity.* Notwithstanding paragraph (c)(6)(ii)(A) of this section, the following certificates (or parts of certificates), written statements, or documentary evidence shall remain valid until the withholding agent has knowledge of a change in circumstances that makes the information on the documentation incorrect—

(*1*) A withholding certificate or written statement provided by a participating FFI or registered deemed-compliant FFI that has furnished a valid GIIN that has been verified by the withholding agent in the manner set forth in paragraph (e)(3) of this section;

(*2*) A beneficial owner withholding certificate that is provided by an individual claiming foreign status if the withholding certificate is furnished with documentary evidence supporting the individual's claim of foreign status and the withholding agent does not have a current U.S. residence or U.S. mailing address for the payee and does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee;

(*3*) A beneficial owner withholding certificate that is provided by an entity described in paragraph (c)(6)(ii)(C)(*2*) of this section if the withholding certificate is furnished with documentary evidence establishing the entity's foreign status;

(*4*) A withholding certificate of an intermediary, flow-through entity, or U.S. branch (not including the withholding certificates, written statements, or documentary evidence of the payees, or withholding statements associated with the withholding certificate);

(*5*) A withholding certificate, written statement, or documentary evidence furnished by a foreign government, government of a U.S. territory, foreign central bank (including the Bank for International Settlements), international organization, or entity that is wholly owned by any such entities; and

(*6*) Documentary evidence that is not generally renewed or amended (such as a certificate of incorporation).

(C) *Indefinite validity in the case of certain offshore obligations.* Notwithstanding paragraph (c)(6)(ii)(A) of this section, the following certificates, written statements, and documentary evidence that are provided with respect to offshore obligations shall remain valid until a change in circumstances occurs that makes the information on the documentation incorrect—

(*1*) A withholding certificate or documentary evidence provided by an individual claiming foreign status if the withholding agent does not have a current U.S. residence or U.S. mailing address for the payee, does not have one

or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee, and has not been provided standing instructions to make a payment in the United States for the obligation;

(*2*) A withholding certificate, written statement, or documentary evidence provided by one of the following entities if such entity is the payee—

(*i*) A retirement fund described in § 1.1471–6(f) or an entity that is wholly owned by such a retirement fund;

(*ii*) An excepted nonfinancial group entity described in § 1.1471–5(e)(5)(i);

(iii) A section 501(c) entity described in § 1.1471–5(e)(v);

(*iv*) A non-profit organization described in § 1.1471–5(e)(5)(vi);

(*v*) A nonreporting IGA FFI;

(*vi*) A territory financial institution that agrees to be treated as a U.S. person for chapter 4 purposes;

(*vii*) An NFFE whose stock is regularly traded as described in § 1.1472–1(c)(1)(i);

(*viii*) An NFFE affiliate described in § 1.1472–1(c)(1)(ii);

(*ix*) An active NFFE that the withholding agent has determined, through its AML due diligence, is engaged in a business other than that of a financial institution, and ongoing monitoring of the account for purposes of AML due diligence does not indicate that the determination is incorrect; and

(*x*) A sponsored FFI described in § 1.1471–5(f)(2)(iii);

(*3*) A withholding certificate of an owner-documented FFI, but not including the withholding statements, documentary evidence, and withholding certificates of its owners (unless such documentation is permitted indefinite validity under another provision);

(*4*) A withholding statement associated with a withholding certificate of an owner-documented FFI provided the account balance of all accounts held by such owner-documented FFI with the withholding agent does not exceed $1,000,000 on the later of December 31, 2013, or the last day of the calendar year in which the account was opened, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), and the owner-documented FFI does not have any contingent beneficiaries or designated classes with unidentified beneficiaries; and

(*5*) A withholding certificate of a passive NFFE or excepted territory NFFE, provided the account balance of all accounts held by such entity with the withholding agent does not exceed $1,000,000 on the later of December 31, 2013, or the last of the calendar year in which the account was opened, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), and the withholding agent does not know or have reason to know that the entity has any contingent beneficiaries or designated classes with unidentified beneficiaries.

(D) *Exception for certificate for effectively connected income.* Notwithstanding paragraphs (c)(6)(ii)(B) to (C) of this section, the period of validity of a withholding certificate furnished to a withholding agent to claim a reduced rate of withholding for income that is effectively connected with the conduct of a trade or business within the United States shall be limited to the three-year period described in paragraph (c)(6)(ii)(A) of this section.

(E) *Change in circumstances*—(*1*) *Defined.* For purposes of this chapter, a person is considered to have a change in circumstances only if such change would affect the chapter 4 status of the person. A change in circumstances includes any change that results in the addition of information described in paragraph (e)(4) relevant to a person's claim of foreign status (that is, U.S. indicia that is not otherwise cured by documentation on file and that is relevant to the chapter 4 status claimed) or otherwise conflicts with such person's claim of chapter 4 status. Unless stated otherwise, a change of address or telephone number is a change in circumstances for purposes of this paragraph (c)(6)(ii)(E) only if it changes to an address or telephone number in the United States. A change in circumstances affecting the withholding information provided to the withholding agent, including allocation information or withholding pools contained in a withholding statement or owner reporting statement, will terminate the validity of the withholding certificate with respect to the information that is no longer reliable, until the information is updated.

(*2*) *Obligation to notify withholding agent of a change in circumstances.* If a change in circumstances makes any information on a certificate or other documentation incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate, a new written statement, or new documentary evidence. If an intermediary or a flow-through entity becomes aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects a payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change in circumstances within 30 days of the date that it knows or has reason to know of the change in circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation the validity of which has expired due to the change in circumstances.

(*3*) *Withholding agent's obligation with respect to a change in circumstances.* A certificate or other documentation becomes invalid on the date that the withholding agent holding the certificate or documentation knows or has reason to know that circumstances affecting the correctness of the certificate or documentation have changed. However, a withholding agent may choose to treat a person as having the same chapter 4 status that it had prior to the change in circumstances until the earlier of 90 days from the date that the certificate or documentation became unreliable due to the change in circumstances or the date that a new certificate or new documentation is obtained. A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed. A withholding agent may require a new certificate or additional documentation at any time prior to a payment, regardless of whether the withholding agent knows or has reason to know that any information stated on the certificate or documentation has changed.

(iii) *Record Retention*—(A) *In general.* A withholding agent must retain each withholding certificate, written statement, or copy of documentary evidence for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1474(a) and § 1.1474–1. A withholding agent may retain an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the withholding certificate, written statement, or documentary evidence. With respect to documentary evidence, the withholding agent must also note in its records the date on which the document was received and reviewed. Any documentation that is stored electronically must be made available in hard copy form to the IRS upon request during an examination.

(B) *Exception for documentary evidence received with respect to offshore obligations.* A withholding agent that is making a payment with respect to an offshore obligation and is not required to retain copies of documentation reviewed pursuant to its AML due diligence, may, in lieu of retaining the documents as set forth in paragraph (c)(6)(iii)(A), retain a notation of the type of documentation reviewed, the date the documentation was reviewed, the document's identification number (if any) (for example, a passport number), and whether such documentation contained any U.S. indicia. The previous sentence applies with respect to an offshore obligation that is also a preexisting obligation, except, in such case, the requirement to record whether the documentation contained U.S. indicia does not apply. See also § 1.1471–4(c)(2)(iv) for the record retention requirements of a participating FFI.

(iv) *Electronic transmission of withholding certificate, written statement, and documentary evidence.* A withholding agent may accept a withholding certificate (including an acceptable substitute form), a written statement, or other such form as the IRS may prescribe, electronically in accordance with the requirements set forth in § 1.1441–1(e)(4)(iv). See § 1.1441–1(e)(4)(iv) for procedures for the electronic transmission of a withholding certificate that has been completed and signed with a handwritten signature, scanned into an electronic system, and sent to the withholding agent via email. A withholding certificate (including a substitute form), written statement, or other such form prescribed by the IRS may be accepted by facsimile if the withholding agent confirms that the individual or entity furnishing the form is the individual or entity named on the form and the faxed form contains a signature of the person whose name is on the form (or such person's authorized representative) made under penalties of perjury in the manner described in § 1.1441–1(e)(4)(iv)(B)(*3*)(*i*). A withholding agent may also accept a copy of documentary evidence electronically, including by facsimile or by email, if the withholding agent confirms that the person furnishing the documentary evidence is the person named on the documentary evidence (or such person's authorized representative) and the copy does not appear to have been altered from its original form.

(v) *Acceptable substitute withholding certificate*—(A) *In general.* A withholding agent may substitute its own form for an official Form W–8 (or such other official form as the IRS may prescribe). A substitute form will be acceptable if it contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one on the official form. The substitute form is acceptable even if it does not contain all of the provisions contained on the official form, so long as it contains those provisions that are relevant to the transaction for which it is furnished. A withholding agent may choose to provide a substitute form that does not include all of the exemptions from withholding provided on the official version but the substitute form must include any chapter 4 status for which withholding may apply, such as the categories for a nonparticipating FFI or passive NFFE. A withholding agent that uses a substitute form must furnish instructions relevant to the substitute form only to the extent and in the manner specified in the instructions to the official form. A withholding agent may use a substitute form that is written in a language other than English and may accept a form that is filled out in a language other than English, but the withholding agent must make available an English translation of the form and its contents to the IRS upon request. A withholding agent may refuse to accept a certificate from a person (including the official Form W–8) if the certificate provided is not an acceptable substitute form provided by the withholding agent, but only if the withholding agent furnishes the person with an acceptable substitute form within five business days of receipt of an unacceptable form from the person. In that case, the substitute form is acceptable only if it contains a notice that the withholding agent has refused to accept the form submitted by the person and that the person must submit the acceptable form provided by the withholding agent in order for the person to be treated as having furnished the required withholding certificate.

(B) *Non-IRS form for individuals.* A withholding agent may also substitute its own form for an official Form W–8BEN (for individuals), regardless of whether the substitute form is titled a Form W–8. However, in addition to the name and address of the individual that is the payee or beneficial owner, the form must provide all countries in which the individual is resident for tax purposes, city and country of birth, a tax identification number, if any, for each country of residence, and must contain a signed and dated certification made under penalties of perjury that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. Notwithstanding the previous sentence, the signed certification provided on a form need not be signed under penalties of perjury if the form is accompanied by documentary evidence that supports the individual's claim of foreign status. Such documentary evidence may be the same documentary evidence that is used to support foreign status in the case of a payee whose account has U.S. indicia as described in paragraph (e) of this section or § 1.1471–4(c)(4)(i)(A). The form may also request other information required for purposes of tax or AML due diligence in the United States or in other countries.

(vi) *Electronic confirmation of TIN on withholding certificate.* The Commissioner may prescribe procedures in a revenue procedure or other appropriate guidance to require a withholding agent to confirm electronically with the IRS information concerning any TIN stated on a withholding certificate.

(vii) *Reliance on a prior version of a withholding certificate.* Upon the issuance by the IRS of an updated version of a withholding certificate, a withholding agent may continue to accept the prior version of the withholding certificate for six months after the revision date shown on the updated withholding certificate, unless the IRS has issued guidance that indicates otherwise, and may continue to rely upon a previously signed prior version of the withholding certificate until its period of validity expires.

(7) *Curing documentation errors.* The provisions in this paragraph (c)(7) describe standards generally applicable to withholding certificates (Forms W–8 or substitute forms), written statements, and documentary evidence furnished to establish the payee's chapter 4 status. These provisions do not apply to Forms W–9 (or their substitutes). For corresponding provisions regarding the Form W–9 (or a substitute Form W–9), see section 3406 and the regulations thereunder.

(i) *Curing inconsequential errors on a withholding certificate.* A withholding agent may treat a withholding certificate as valid, notwithstanding that the withholding certificate contains an inconsequential error, if the withholding agent has sufficient documentation on file to supplement

the information missing from the withholding certificate due to the error. In such case, the documentation relied upon to cure the inconsequential error must be conclusive. For example, a withholding certificate in which the individual submitting the form abbreviated the country of residence may be treated as valid, notwithstanding the abbreviation, if the withholding agent has government issued identification for the person from a country that reasonably matches the abbreviation. On the other hand, an abbreviation for the country of residence that does not reasonably match the country of residence shown on the person's passport is not an inconsequential error. A failure to select an entity type on a withholding certificate is not an inconsequential error, even if the withholding agent has an organization document for the entity that provides sufficient information to determine the person's entity type, if the person was eligible to make an election under § 301.7701–3(c)(1)(i) of this chapter (that is, a check-the-box election). A failure to check a box to make a required certification on the withholding certificate or to provide a country of residence or a country under which treaty benefits are sought is not an inconsequential error. In addition, information on a withholding certificate that contradicts other information contained on the withholding certificate or in the customer master file is not an inconsequential error.

(ii) *Documentation received after the time of payment.* Proof that withholding was not required under the provisions of chapter 4 and the regulations thereunder also may be established after the date of payment by the withholding agent on the basis of a valid withholding certificate and/or other appropriate documentation that was furnished after the date of payment but that was effective as of the date of payment. A withholding certificate furnished after the date of payment will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. A certificate obtained within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain an affidavit. However, in the case of a withholding certificate of an individual received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence described in paragraph (c)(5)(i) of this section that supports the individual's claim of foreign status. In the case of a withholding certificate of an entity received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence specified in paragraph (c)(5)(ii) of this section that supports the chapter 4 status claimed. If documentation other than a withholding certificate is submitted from a payee more than a year after the date of payment, the withholding agent will be required to also obtain from the payee a withholding certificate and affidavit supporting the chapter 4 status claimed as of the date of the payment.

(8) *Documentation furnished on account-by-account basis unless exception provided for sharing documentation within expanded affiliated group.* Except as otherwise provided in this paragraph (c)(8), a withholding agent that is a financial institution with which a customer may open an account must obtain withholding certificates, written statements, Forms W–9, or documentary evidence on an account-by-account basis. Notwithstanding the previous sentence, a withholding agent may rely upon the withholding certificate, written statement, or documentary evidence furnished by a customer under any one or more of the circumstances described in this paragraph (c)(8).

(i) *Single branch systems.* A withholding agent may rely on documentation furnished by a customer for another account if both accounts are held at the same branch location and both accounts are treated as consolidated obligations.

(ii) *Universal account systems.* A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a member of the expanded affiliated group of the withholding agent if the withholding agent treats all accounts that share documentation as consolidated obligations and the withholding agent and the other branch location or expanded affiliated group member are part of a universal account system that uses a customer identifier that can be used to retrieve systematically all other accounts of the customer. A withholding agent that opts to rely upon the chapter 4 status designated for the payee in the universal account system without obtaining and reviewing copies of the documentation supporting the status must be able to produce all documentation (or a notation of the documentary evidence reviewed if the withholding agent is not required to retain copies of the documentary evidence) relevant to the chapter 4 status claimed upon request by the IRS and will be liable for any underwithholding that results from any failure to assign the correct status based upon the available information.

(iii) *Shared account systems.* A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a member of the expanded affiliated group of the withholding agent if the withholding agent treats all accounts that share documentation as consolidated accounts and the withholding agent and the other branch location or expanded affiliated group member share an information system, electronic or otherwise, that is described in this paragraph (c)(8)(iii). The system must allow the withholding agent to easily access data regarding the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself), and the validity status of the documentation. The information system must also allow the withholding agent to easily transmit data into the system regarding any facts of which it becomes aware that may affect the reliability of the documentation. The withholding agent must be able to establish, to the extent applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation and must be able to establish that any data it has transmitted to the information system has been processed and appropriate due diligence has been exercised regarding the validity of the documentation. A withholding agent that opts to rely upon the chapter 4 status designated for the payee in the shared account system without obtaining and reviewing copies of the documentation supporting the status must be able to produce all documentation (or a notation of the documentary evidence reviewed if the withholding agent is not required to retain copies of the documentary evidence) relevant to the chapter 4 status claimed upon request by the IRS and will be liable for any underwithholding that results from any failure to assign the correct status based upon the available information.

(iv) *Document sharing for gross proceeds.* [Reserved].

(9) *Reliance on documentation collected by or certifications provided by other persons*—(i) *Shared documentation system maintained by an agent.* A withholding agent may rely on documentation collected by an agent (including a fund advisor for mutual funds, hedge funds, or a private equity group) of the withholding agent. The agent may retain the documentation as part of an information system maintained for a single withholding agent or multiple withholding agents provided that under the system, any withholding agent on behalf of which the agent retains documentation may easily access data regarding the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself) and its validity, and must allow such withholding agent to easily transmit data, either directly into an electronic system or by providing such information to the agent, regarding any facts of which it becomes aware that may affect the reliability of the documentation. The withholding agent must be able to establish, to the extent applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation and must be able to establish that any data it has transmitted has been processed and appropriate due diligence has been exercised regarding the validity of the documentation. The agent must have a system in effect to ensure that any information it receives regarding facts that affect the reliability of the documentation or the chapter 4 status assigned to the customer are provided to all withholding agents for which the agent retains the documentation and any chapter 4 status assigned by the agent is amended to incorporate such information. A withholding agent that opts to rely upon the chapter 4 status assigned by the agent without obtaining and reviewing copies of the documentation supporting the status must be able to produce all documentation relevant to the chapter 4 status claimed upon request by the IRS and will be liable for any underwithholding that results from a failure of the agent to assign the correct status based upon the available information. See § 1.1474–1(a) for a withholding agent's liability when it relies upon an agent for chapter 4 purposes. This paragraph (c)(9)(i) does not apply to a withholding certificate provided by a QI, a withholding certificate provided by a territory financial institution that elects to be treated as a U.S. person, or any withholding statement, unless the person submitting the form specifically identifies the withholding agents for which the certificates and/or statements are provided.

(ii) *Third-party data providers.* A withholding agent may rely upon documentation collected by a third-party data provider with respect to an entity, subject to the conditions described in this paragraph (c)(9)(ii).

(A) The third-party data provider must have collected documentation that is sufficient to determine the chapter 4 status of the entity under paragraph (d) of this section.

(B) The third-party data provider must be in the business of providing credit reports or business reports to unrelated customers and must have reviewed all information it has for the entity and verified that such additional information does not conflict with the chapter 4 status claimed by the entity.

(C) The third-party data provider must notify the entity submitting the documentation that such entity must notify the third-party data provider in the event of a change in circumstances within 30 days of the change in circumstances, and the third-party data provider must be obligated under its contract with the withholding agent to notify the withholding agent if a change in circumstances occurs.

(D) The withholding agent may not rely upon a chapter 4 status provided by a third-party data provider if the withholding agent knows or has reason to know that the chapter 4 status is unreliable or incorrect based on information in the withholding agent's account records, or if the documentation or information provided by the third-party data provider does not support the chapter 4 status claimed.

(E) The withholding agent must be able to submit copies of the documentation received from the third-party data provider upon request to the IRS and will remain liable for any underwithholding that occurs as a result of its reliance on information provided by the third-party data provider if the documentation is invalid or unreliable.

(F) This paragraph (c)(9)(ii) does not apply to a withholding statement or a withholding certificate that contains an election to accept withholding or reporting responsibility (such as one made by a QI, territory financial institution, or U.S. branch) provided by a third-party data provider.

(iii) *Reliance on certification provided by introducing brokers*—(A) A withholding agent may rely on a certification of a broker indicating the broker's determination of a payee's chapter 4 status and indicating that the broker holds valid documentation sufficient to determine the payee's chapter 4 status under paragraph (d) of this section with respect to any readily tradable instrument as defined in § 31.3406(h)–1(d) of this chapter if the conditions in paragraph (c)(9)(iii)(B) of this section are satisfied and the broker is either—

(*1*) A U.S. person (including a U.S. branch that is treated as a U.S. person) that is acting as the agent of the payee; or

(*2*) A participating FFI or a reporting Model 1 FFI that is acting as the agent of the payee with respect to an obligation and receiving all payments from the withholding agent with respect to such obligation as an intermediary on behalf of the payee.

(B) The certification from the broker must be in writing or in electronic form and contain all of the information required of a chapter 4 withholding statement described in paragraph (c)(3)(iii)(B)(*3*). Notwithstanding this paragraph (c)(9)(iii), a withholding agent may not rely upon a certification provided by a broker if it knows or has reason to know that the broker has not obtained valid documentation as represented or the information contained in the certification is otherwise inaccurate. A broker that chooses to provide a certification under this paragraph (c)(9)(iii) will be responsible for applying the rules set forth in the regulations under section 1471 and 1472 to the withholding certificates, written statements, or documentary evidence obtained from the payee and shall be liable for any underwithholding that occurs as a result of the broker's failure to reasonably apply such rules.

(iv) *Reliance on documentation and certifications provided between principals and agents*—(A) *In general.* Subject to the conditions under § 1.1474–1(a)(3), a withholding agent is permitted to use an agent to fulfill its chapter 4 obligations and such agent's actions are imputed to the principal. However, an agent that makes a payment pursuant to an agency arrangement (paying agent) is also a withholding agent with respect to the payment unless an exception under § 1.1473–(d) applies. Therefore, the paying agent will have its own obligation to determine the chapter 4 status of the payee and withhold upon the payment if required. Although a paying agent is generally a withholding agent for purposes of chapter 4, the financial accounts to which it makes payments are not necessarily financial accounts of the paying agent. See the rules under § 1.1471–5(b)(5) to

determine when a financial institution maintains a financial account. In addition, the status of a payment as made with respect to an offshore obligation or as a preexisting obligation will be determined based on such obligation's status in relation to the principal. Further, the due diligence required with respect to the payment will be determined by the status of the principal and not the paying agent. Consequently, a payment that is made, for example, by a paying agent that is a foreign entity on behalf of a principal that is a U.S. withholding agent will be subject to the due diligence applicable to the principal. See § 1.1474–1(a)(3) for rules regarding the reporting obligations of a principal and agent in the case of a payment made by an agent of behalf of a principal.

(B) *Reliance upon certification of the principal.* An agent that makes a payment on behalf of a principal that it may treat, pursuant to paragraph (d) of this section, as a U.S. withholding agent, participating FFI, or reporting Model 1 FFI may rely upon a certification provided by the principal indicating that the principal has obtained valid documentation sufficient to determine the chapter 4 status of the payee and may rely upon the principal's determination as to the payee's chapter 4 status. In such a case, the agent will be permitted to rely upon the certification provided by the principal when determining whether it is required to withhold on the payment and will not be liable for any underwithholding that occurs as a result of the principal's failure to properly determine the chapter 4 status of the payee unless the agent knows or has reason to know the certification provided by the principal is inaccurate.

(C) *Document sharing.* In lieu of obtaining a certification from the principal as described in paragraph (c)(9)(iv)(B) of this section, or when reliance upon such certification is not permitted, an agent that makes a payment on behalf of a principal may rely upon copies of documentation provided to the principal with respect to the payment. However, in such case, both the principal and the agent are obligated to determine the chapter 4 status of the payee based upon the documentation and ensure that adequate withholding occurs with respect to the payment. While a principal is imputed the knowledge of the agent with respect to the payment, the agent is not imputed the knowledge of the principal.

(D) Examples—(1) Example 1. Paying agent that does not collect documentation. A fund, P, that is a participating FFI contracts with a U.S. person, A, to make payments to its account holders with respect to their equity interests in P. P contracts with another agent, B, to obtain documentation sufficient to determine the chapter 4 status of such account holders. Based on the documentation it collects, B determines that none of P's account holders are subject to withholding. P provides a certification to A indicating that it has obtained documentation sufficient to determine the chapter 4 status of P's account holders and that each payee is not subject to withholding under chapter 4. As the actions of B, as P's agent, are attributed to P, P may provide a certification to A indicating that it has determined the chapter 4 status of its payees, even if it is B, and not P, who made the determinations. However, P will be liable for any underwithholding that results from a failure by B to reasonably apply the rules under chapter 4. A is permitted to rely upon the certification provided by P and, accordingly, is not required to withhold on the payments made to P's account holders and would not be liable for any underwithholding that results if the determinations made by B are incorrect unless A had reason to know that chapter 4 status claimed was inaccurate.

(ii) Example 2. Paying agent that collects documentation. A fund, P, that is a participating FFI contracts with a U.S. person, A, to make a payment to its account holders on its behalf. P also contracts with A to obtain documentation sufficient to determine the chapter 4 status of P's account holders. Based on the documentation it collects, A determines that none of P's account holders are subject to withholding. As the actions of A, as P's agent, are imputed to P, P will be liable for any underwithholding that results from a failure by A to reasonably apply the rules under chapter 4. P is also required to retain the documentation upon which A relied in determining the chapter 4 status of its account holders. Because A performed the due diligence on behalf of P, A will have reason to know if any of the chapter 4 determinations made based on the documentation received were made incorrectly, and, as a withholding agent with respect to the payment, is liable, in addition to P, for any underwithholding that results from an incorrect determination that withholding was not required. This result applies regardless of whether A retains copies of the documentation obtained with respect to P's account holders or receives a certification from P indicating that P has obtained documentation sufficient to determine the chapter 4 status of its account holders and that each payee is not subject to withholding under chapter 4.

(v) *Reliance upon documentation for accounts acquired in merger or bulk acquisition for value.* A withholding agent that acquires an account from a predecessor or transferor in a merger or bulk acquisition of accounts for value is permitted to rely upon valid documentation (or copies of valid documentation) collected by the predecessor or transferor. In addition, a withholding agent that acquires an account in a merger or bulk acquisition of accounts for value, other than a related party transaction, from a U.S. withholding agent, participating FFI that has completed all due diligence required under its agreement with respect to the accounts transferred, or a reporting Model 1 FFI that has completed all due diligence required pursuant to the applicable Model 1 IGA, may also rely upon the predecessor's or transferor's determination of the chapter 4 status of an account holder for a transition period of the lesser of six months from the date of the merger or until the acquirer knows that the claim of status is inaccurate or a change in circumstances occurs. At the end of the transition period, the acquirer will be permitted to rely upon the predecessor's determination as to the chapter 4 status of the account holder only if the documentation that the acquirer has for the account holder, including documentation obtained from the predecessor or transferor, supports the chapter 4 status claimed. An acquirer that discovers at the end of the transition period that the chapter 4 status assigned by the predecessor or transferor to the account holder was incorrect and, as a result, has not withheld as it would have been required to but for its reliance upon the predecessor's determination, will be required to withhold on future payments, if any, made to the account holder the amount of tax that should have been withheld during the transition period but for the erroneous classification as to the account holder's status. For purposes of this paragraph (c)(9)(v), a related party transaction is a merger or sale of accounts in which the acquirer is in the same expanded affiliated group as the predecessor or transferor either prior to or after the merger or acquisition or the predecessor or transferor (or shareholders of the predecessor or transferor) obtain a controlling interest in the acquirer or in a newly formed entity created for purposes of the merger or acquisition. See § 1.1471–4(c)(2)(ii)(B) for an additional allowance for a participating FFI to rely upon the determination made by another participating FFI as to the chapter 4 status of an account obtained as part of a merger or bulk acquisition for value.

(d) *Documentation requirements to establish payee's chapter 4 status.* Unless the withholding agent knows or has reason to know otherwise, a withholding agent may rely on the provisions of this paragraph (d) to determine the chapter 4 status of a

payee (or other person that receives a payment). Except as otherwise provided in this paragraph (d), a withholding agent is required to obtain a valid withholding certificate or a Form W–9 from a payee in order to treat the payee as having a particular chapter 4 status. Paragraphs (d)(1) through (12) of this section indicate when it is appropriate for a withholding agent to rely upon a written statement, documentary evidence, or other information in lieu of a Form W–8 or W–9. Paragraphs (d)(1) through (12) of this section also prescribe additional documentation requirements that must be met in certain cases in order to treat a payee as having a specific chapter 4 status and specific standards of knowledge that apply to a particular payee, in addition to the general standards of knowledge set forth in paragraph (e) of this section. This paragraph (d) also provides the circumstances in which special documentation rules are permitted with respect to preexisting obligations. A withholding agent may not rely on documentation described in this paragraph (d) if the documentation is not valid or cannot reliably be associated with the payment pursuant to the requirements of paragraph (c) of this section, or the withholding agent knows or has reason to know that such documentation is incorrect or unreliable as described in paragraphs (d) and (e) of this section. If the chapter 4 status of a payee cannot be determined under this paragraph (d) based on documentation received, a withholding agent must apply the presumption rules in paragraph (f) to determine the chapter 4 status of the payee.

(1) *Reliance on pre-FATCA Form W–8.* To establish a payee's status as a foreign individual, foreign government, or international organization, a withholding agent may rely upon a pre-FATCA Form W–8 in lieu of obtaining an updated version of the withholding certificate. To establish the chapter 4 status of a payee that is not a foreign individual, foreign government, or international organization, a withholding agent may, for payments made prior to January 1, 2017, rely upon a pre-FATCA Form W–8 in lieu of obtaining an updated version of the withholding certificate if the withholding agent has one or more forms of documentary evidence described in paragraphs (c)(5)(ii), as necessary, to establish the chapter 4 status of the payee and the withholding agent has obtained any additional documentation or information required for the particular chapter 4 status (such as withholding statements, certifications as to owners, or required documentation for underlying owners), as set forth under the specific payee rules in paragraphs (d)(2) through (12) of this section. See paragraph (d)(4)(ii) and (iv) of this section for specific requirements when relying upon a pre-FATCA Form W–8 for a participating FFI or registered deemed-compliant FFI. This paragraph (d)(1) does not apply to nonregistering local banks, FFIs with only low-value accounts, sponsored FFIs, owner-documented FFIs, territory financial institutions that are not the beneficial owners of the payment, or foreign central banks (other than a foreign central bank specifically identified as an exempt beneficial owner under a Model 1 IGA or Model 2 IGA).

(2) *Identification of U.S. persons*—(i) *In general.* A withholding agent must treat a payee as a U.S. person if it has a valid Form W–9 associated with the payee or if it must presume the payee is a U.S. person under the presumption rules set forth in paragraph (f) of this section. Consistent with the presumption rules in paragraph (f)(3) of this section, a withholding agent must treat a payee that has provided a valid Form W–9 as a specified U.S. person unless the Form W–9 indicates that the payee is other than a specified U.S. person. Notwithstanding the foregoing, a withholding agent receiving a Form W–9 indicating that the payee is other than a specified U.S. person must treat the payee as a specified U.S. person if the withholding agent knows or has reason to know that the payee's claim that it is other than a specified U.S. person is incorrect. For example, a withholding agent that receives a Form W–9 from a payee that is an individual would be required to treat the payee as a specified U.S. person regardless of whether the Form W–9 indicates that the payee is not a specified U.S. person, because an individual that is a U.S. person is not excepted from the definition of a specified U.S. person

(ii) *Reliance on documentary evidence.* A withholding agent may also treat the payee as a U.S. person that is other than a specified U.S. person if the withholding agent has documentary evidence described in paragraphs (c)(5)(i)(C) and (D) of this section or general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that both establishes that the payee is a U.S. person and establishes (either through the documentation or the application of the presumption rules in § 1.6049–4(c)(ii) or paragraph (f)(3) of this section) that the payee is an exempt recipient. For purposes of the previous sentence, an exempt recipient means with respect to a withholding agent other than a participating FFI or registered deemed-compliant FFI, an exempt recipient under § 1.6049–4(c)(ii) or, with respect to a withholding agent that is a participating FFI or registered deemed-compliant FFI, a U.S. person other than a specified U.S. person as described under § 1.1473–1(c).

(iii) *Preexisting obligations.* As an alternative to applying the rules in paragraphs (d)(2)(i) and (ii) of this section, a withholding agent that makes a payment with respect to a preexisting obligation may treat a payee as a U.S. person if it has a notation in its files that it has previously reviewed a Form W–9 that established that the payee is a U.S. person and has retained the payee's TIN. A withholding agent, other than a participating FFI or registered deemed-compliant FFI, may also treat a payee as a U.S. person if it has previously reviewed a Form W–9 or documentary evidence that established that the payee is a U.S. person and established (through the documentation or the application of the presumption rules in § 1.6049–4(c)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

(3) *Identification of individuals that are foreign persons*—(i) *In general.* A withholding agent may treat a payee as an individual that is a foreign person if the withholding agent has a withholding certificate identifying the payee as such a person.

(ii) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an individual that is a foreign person if it obtains documentary evidence supporting the payee's claim of status as a foreign individual (as described in paragraph (c)(5)(i)) or if the payee is presumed to be an individual that is a foreign person under the presumption rules set forth in paragraph (f) of this section.

(4) *Identification of participating FFIs and registered deemed-compliant FFIs*—(i) *In general.* Except as otherwise provided in paragraph (d)(4)(ii) through (iv) of this section, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI only if the withholding agent has a withholding certificate identifying the payee as a participating FFI or registered deemed-compliant FFI and the withholding certificate contains a GIIN for the payee that is verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section (indicating when a withholding agent may rely upon a GIIN). For payments made prior to January 1, 2016,

a participating FFI that is a sponsored FFI may provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored FFI has not obtained a GIIN.

(ii) *Exception for payments made prior to January 1, 2017, with respect to preexisting obligations (transitional).* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a participating FFI or registered deemed-compliant FFI if the payee has provided the withholding agent (either orally or in writing) its GIIN and indicated whether it is a participating FFI or a registered deemed-compliant FFI, and the withholding agent has verified the GIIN in the manner described in paragraph (e)(3) of this section.

(iii) *Exception for offshore obligations.* A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation may treat the payee as a participating FFI or registered deemed-compliant FFI if the payee provides the withholding agent with its GIIN and states whether the payee is a participating FFI or a registered deemed-compliant FFI, and the withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section. A withholding agent that makes a payment of U.S. source FDAP income with respect to an offshore obligation may treat the payee as a participating FFI or registered deemed-compliant FFI if—

(A) The payee provides the withholding agent with—

(*1*) A written statement that contains the payee's GIIN and states that the payee is the beneficial owner of the payment and a participating FFI or a registered deemed-compliant FFI, as appropriate; and

(*2*) Documentary evidence supporting the payee's claim of foreign status; and

(B) The withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section.

(iv) *Exceptions for payments to reporting Model 1 FFIs.*—(A) For payments made prior to January 1, 2015, a withholding agent may treat the payee as a reporting Model 1 FFI if it receives a withholding certificate from the payee indicating that the payee is a reporting Model 1 FFI and the country in which the payee is a reporting Model 1 FFI, regardless of whether the certificate contains a GIIN for the payee.

(B) For payments made prior to January 1, 2015, with respect to a preexisting obligation, a withholding agent may treat a payee as a reporting Model 1 FFI if it obtains a pre-FATCA Form W–8 from the payee, and the payee indicates (either orally or in writing) that it is a reporting Model 1 FFI and the country in which it is a reporting Model 1 FFI, regardless of whether the certificate contains a GIIN for the payee.

(C) For payments made prior to January 1, 2015, with respect to an offshore obligation, a withholding agent may treat the payee as a reporting Model 1 FFI if the payee informs the withholding agent that the payee is a reporting Model 1 FFI and provides the country in which the payee is a reporting Model 1 FFI. In the case of a payment of U.S. source FDAP income, such payee must also provide a written statement that it is the beneficial owner and documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(D) For payments made on or after January 1, 2015, that do not constitute U.S. source FDAP income, the withholding agent may continue to treat a payee as a reporting Model 1 FFI if the payee provides the withholding agent with its GIIN, either orally in writing, and the withholding agent verifies the GIIN in the manner described in paragraph (e)(3) of this section.

(v) *Reason to know.* Except as otherwise provided in this paragraph (d)(4), a withholding certificate or written statement that identifies the payee as a participating FFI or registered deemed-compliant FFI but does not provide the payee's GIIN or provides a GIIN that does not appear on the current published IRS FFI list within 90 calendar days after the date that the claim is made, will be treated as invalid for purposes of chapter 4, and the payee will be treated as an undocumented payee beginning on the date that the form was submitted until valid documentation or a correct GIIN is provided. A withholding agent that discovers that the payee's GIIN does not appear on the published IRS FFI list within 90 calendar days after the date the claim is made and, as a result, has not withheld as it would have been required to but for its reliance upon the payee's claim of status as a participating FFI or registered deemed-compliant FFI, will be required to withhold on future payments, if any, made to the payee of the amount of tax that should have been withheld during the 90 day period but for the erroneous classification as to the payee's status. The withholding required pursuant the prior sentence is in addition to any withholding required under § 1.1471–2(a) on those payments. A withholding agent that has withheld as required in the previous two sentences may apply reimbursement or set-off procedures, as described in § 1.1474–2(a), if it is later determined that the payee appeared on the IRS FFI list as a participating FFI or registered deemed-compliant FFI at the time of payment.

(5) *Identification of certified deemed-compliant FFIs*—(i) *In general.* Except as otherwise provided in this paragraph (d)(5), a withholding agent may treat a payee as a category of certified deemed-compliant FFI, other than a sponsored FFI, if the withholding agent has a withholding certificate that identifies the payee as a certified deemed-compliant FFI, and the withholding certificate contains a certification by the payee that it meets the requirements to qualify as the type of certified deemed-compliant FFI identified on the withholding certificate.

(ii) *Sponsored, closely held investment vehicles*—(A) *In general.* A withholding agent may treat a payee as a *sponsored, closely held investment vehicle* described in § 1.1471–5(f)(2)(iii) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as a sponsored FFI and includes the sponsor's GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section. In addition to the standards of knowledge rules indicated in paragraph (e) of this section, a withholding agent will have reason to know that the payee is not a sponsored, closely held investment vehicle described in § 1.1471–5(f)(2)(iii) if its AML due diligence indicates that the payee has in excess of 20 individual investors that own direct and/or indirect interests in the payee.

(B) *Offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a sponsored, closely held investment vehicle if it obtains a written statement that indicates that the payee is a sponsored FFI, and provides the GIIN of the sponsor, which the withholding agent has verified in the manner described in paragraph (e)(3) of this section. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(6) *Identification of owner-documented FFIs*—(i) *In general.* A withholding agent may treat a payee as an owner-documented FFI if all the

following requirements of paragraphs (d)(6)(i)(A) through (F) of this section are met. A withholding agent may not rely upon a withholding certificate to treat a payee as an owner-documented FFI, either in whole or in part, if the withholding certificate does not contain all of the information and associated documentation required by paragraphs (d)(6)(i)(A), (C), and (D) of this section.

(A) The withholding agent has a withholding certificate that identifies the payee as an owner-documented FFI that is not acting as an intermediary;

(B) The withholding agent is a U.S. financial institution, participating FFI, or reporting Model 1 FFI that agrees pursuant to § 1.1471–5(f)(3) to act as a designated withholding agent with respect to the payee;

(C) The payee submits to the withholding agent an FFI owner reporting statement that meets the requirements of paragraph (d)(6)(iv) of this section;

(D) The payee submits to the withholding agent valid documentation meeting the requirements of paragraph (d)(6)(iii) of this section with respect to each person identified on the FFI owner reporting statement;

(E) The withholding agent does not know or have reason to know that the payee (or any other FFI that is an owner of the payee and that the designated withholding agent is treating as an owner-documented FFI) maintains any financial account for a nonparticipating FFI; and

(F) The withholding agent does not know or have reason to know that the payee is in an expanded affiliated group with any other FFI other than an FFI that is also treated as an owner-documented FFI by the withholding agent or that the FFI has any U.S. specified persons that own an equity interest in the FFI or a debt interest (other than a debt interest that is not a financial account or that has a balance or value not exceeding $50,000) in the FFI other than those identified on the FFI owner reporting statement described in paragraph (d)(6)(iv) of this section.

(ii) *Auditor's letter substitute.* A payee may, in lieu of providing an FFI owner reporting statement and documentation for each owner of the FFI as described in paragraphs (d)(6)(i)(C) and (D) of this section, provide a letter from an auditor or an attorney that is licensed in the United States or whose firm has a location in the United States, signed no more than four years prior to the date of the payment, that certifies that the firm or representative has reviewed the payee's documentation with respect to all of its owners and debt holders described in paragraph (d)(6)(iv) of this section in accordance with § 1.1471–4(c) and that the payee meets the requirements of § 1.1471–5(f)(3). The payee must also provide an FFI owner reporting statement and a Form W–9, with any applicable waiver, for each specified U.S. person that owns a direct or indirect interest in the payee or that holds debt interests described in paragraph (d)(6)(iv) of this section. A withholding agent may rely upon the letter described in this paragraph (d)(6)(ii) if it does not know or have reason to know that any of the information contained in the letter in unreliable or incorrect.

(iii) *Documentation for owners and debt holders of payee.* Acceptable documentation for an individual owning an equity in the payee or debt holders described in paragraph (d)(6)(iv) of this section means a valid withholding certificate, valid Form W–9 (including any necessary waiver), or documentary evidence establishing the foreign status of the individual as set forth in paragraph (d)(3) of this section. Acceptable documentation for a specified U.S. person means a valid Form W–9 (including any necessary waiver). Acceptable documentation for all other persons owning an equity or debt interest in the payee means documentation described in this paragraph (d), applicable to the chapter 4 status claimed by the person. The rules for reliably associating a payment with a withholding certificate or documentary evidence set forth in paragraph (c) of this section, the rules for payee documentation provided in this paragraph (d), and the standards of knowledge set forth in paragraph (e) of this section will apply to documentation submitted by the owners and debt holders by substituting the phrase ''owner of the payee'' or ''debt holder'' for ''payee.''

(iv) *Content of FFI owner reporting statement.* The FFI owner reporting statement provided by an owner-documented FFI must contain the information required by this paragraph (d)(6)(iv) and is subject to the general rules applicable to all withholding statements described in paragraph (c)(3)(iii)(B)(*1*) of this section. An FFI that is a partnership, simple trust, or grantor trust may substitute an NWP withholding statement described in § 1.1441–5(c)(3)(iv) or a foreign simple trust or foreign grantor trust withholding statement described in § 1.1441–5(e)(5)(iv) for the FFI owner reporting statement, provided that the NWP withholding certificate or foreign simple trust or foreign grantor trust withholding certificate contains all of the information required in this paragraph (d)(6)(iv). The owner reporting statement will expire on the last day of the third calendar year following the year in which the statement was provided to the withholding agent unless an exception in paragraph (c)(6)(ii) of this section (for example, accounts with a balance or value of $1,000,000 or less) or this paragraph (d)(6) applies. The owner-documented FFI will also be required to provide the withholding agent with an updated owner reporting statement if there is a change in circumstances as required under paragraph (c)(6)(ii)(E) of this section.

(A) The FFI owner reporting statement must provide the following information:

(*1*) The name, address, TIN (if any), and chapter 4 status of every individual and specified U.S. person that owns a direct or indirect equity interest in the payee (looking through all entities other than specified U.S. persons).

(*2*) The name, address, TIN (if any), and chapter 4 status of every individual and specified U.S. person that owns a debt interest in the payee (including any indirect debt interest, which includes debt interests in any entity that directly or indirectly owns the payee or any direct or indirect equity interest in a debt holder of the payee), in either such case if the debt interest constitutes a financial account in excess of $50,000 (disregarding all such debt interests owned by participating FFIs, registered deemed-compliant FFIs, certified deemed-compliant FFIs, excepted NFFEs, exempt beneficial owners, or U.S. persons other than specified U.S. persons).

(*3*) Any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4.

(B) The information on the FFI owner reporting statement may contain names of equity and debt holders that are prepopulated by the withholding agent based on prior information provided to the withholding agent by the payee if the prepopulated form instructs the payee to amend the statement if the contents are inaccurate, incomplete, or have changed, and the payee confirms in writing that the FFI owner reporting statement submitted to the withholding agent is accurate and complete.

(C) The FFI owner reporting statement may be submitted in any form that meets the requirements of this paragraph, including a form used for purposes of AML due diligence.

(v) *Exception for preexisting obligations (transitional).* A withholding agent may treat a payment made prior to January 1, 2017, with respect to a

preexisting obligation as made to an owner-documented FFI if the withholding agent has collected, for purposes of satisfying its AML due diligence, documentation with respect to each individual and specified U.S. person that owns a direct or indirect interest in the payee, other than an interest as a creditor, within four years of the date of payment, that documentation is sufficient to satisfy the AML due diligence requirements of the jurisdiction in which the withholding agent maintains the account, the withholding agent has sufficient information to report all specified U.S. persons that own an interest in the payee, and the withholding agent does not know, or have reason to know, that any nonparticipating FFI owns an equity interest in the FFI or that any nonparticipating FFI or specified U.S. person owns a debt interest in the FFI constituting a financial account in excess of $50,000.

(vi) *Exception for offshore obligations.* A withholding agent that is making a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation may, in lieu of obtaining a withholding certificate as otherwise required under paragraph (d)(6)(i)(A) of this section, rely upon a written statement that indicates the payee meets the requirements to qualify as an owner-documented FFI under § 1.1471–5(f)(3) and is not acting as an intermediary, if the withholding agent provides a written notice to the payee indicating that the payee is required to update the written statement and all associated documentation (such as the FFI owner reporting statement and underlying documentation) within 30 days of a change in circumstances.

(vii) *Exception for certain offshore obligations of $1,000,000 or less*—(A) A withholding agent may treat the payment as being made to an owner-documented FFI if—

(*1*) The payment is made with respect to an offshore obligation that has a balance or value not exceeding $1,000,000 on the later of December 31, 2013, or the last day of the calendar year in which the account was opened, and the last calendar day of each subsequent year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4);

(*2*) The withholding agent has collected documentation or a certification as to the payee's owners (either for purposes of complying with its AML due diligence or for purposes of satisfying the requirements of this paragraph (d)(6)(vii)) sufficient to identify every individual and specified U.S. person that owns any direct or indirect interest in the payee (other than an interest as a creditor) and determine the chapter 4 status of such person;

(*3*) The documentation described in paragraph (d)(6)(vii)(A)(*2*) of this section is sufficient to satisfy the AML due diligence requirements of the jurisdiction in which the withholding agent maintains the account (and such jurisdiction is a FATF-compliant jurisdiction);

(*4*) The withholding agent has sufficient information to report all specified U.S. persons that own an interest in the payee in accordance with § 1.1474–1(d); and

(*5*) The withholding agent does not know, or have reason to know, that the payee has any contingent beneficiaries or designated classes with unidentified beneficiaries or owners, that any nonparticipating FFI owns a direct or indirect equity interest in the payee, or that any specified U.S. persons or nonparticipating FFIs own a debt interest constituting a financial account in excess of $50,000 in the payee (other than specified U.S. persons that the withholding agent has sufficient information to report).

(B) For example, a withholding agent that is required to obtain a certification from the payee identifying all persons owning an interest in the payee as part of its AML due diligence will not be required to obtain an FFI owner reporting statement, provided the other conditions of this paragraph (d)(6)(vii) are met. On the other hand, a withholding agent that has only obtained documentation for persons owning a certain threshold percentage of the payee will be required to obtain additional documentation to satisfy the requirements of this paragraph (d)(6)(vii). A withholding agent that treats a payee as an owner-documented FFI pursuant to this paragraph (d)(6)(vii) will not be required to obtain new documentation, including the FFI owner reporting statement, until there is a change in circumstances or until the account balance or value exceeds $1,000,000 on the last day of the calendar year.

(7) *Nonreporting IGA FFIs*—(i) *In general.* A withholding agent may treat a payee as a nonreporting IGA FFI if it has a withholding certificate identifying the payee, or the relevant branch of the payee, as a nonreporting IGA FFI.

(ii) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a nonreporting IGA FFI if it can reliably associate the payment with a written statement identifying the payee (or the relevant branch of the payee) as a nonreporting IGA FFI and, with respect to a payment of U.S. source FDAP income, the written statement indicates that the payee is the beneficial owner of the income and is accompanied by documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section). A withholding agent that makes a payment with respect to an offshore obligation may also treat a payee as a nonreporting IGA FFI if the withholding agent has a permanent residence address for the payee, or an address of the relevant branch of the payee, and has obtained a notification, either orally or in writing, indicating that the payee is not acting as an intermediary and general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to reasonably determine that the payee is an entity listed as a nonreporting IGA FFI pursuant to a Model 1 or Model 2 IGA.

(8) *Identification of nonparticipating FFIs*—(i) *In general.* A withholding agent is required to treat a payee as a nonparticipating FFI if the withholding agent can reliably associate the payment with a withholding certificate identifying the payee as a nonparticipating FFI, the withholding agent knows or has reason to know that the payee is a nonparticipating FFI, or the withholding agent is required to treat the payee as a nonparticipating FFI under the presumption rules described in paragraph (f) of this section.

(ii) *Special documentation rules for payments made to an exempt beneficial owner through a nonparticipating FFI.* A withholding agent may treat a payment made to a nonparticipating FFI as beneficially owned by an exempt beneficial owner if the withholding agent can reliably associate the payment with—

(A) A withholding certificate that identifies the payee as a nonparticipating FFI that is either acting as an intermediary or is a flow-through entity; and

(B) An exempt beneficial owner withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(*1*) and (*4*) of this section and contains the associated documentation necessary to establish the chapter 4 status of the exempt beneficial owner in accordance with paragraph (d)(9) of this section as if the exempt beneficial owner were the payee.

(9) *Identification of exempt beneficial owners*—(i) *Identification of foreign governments, governments of U.S.*

territories, international organizations, and foreign central banks of issue—(A) *In general.* A withholding agent may treat a payee as a foreign government, government of a U.S. territory, international organization, or foreign bank of central issue if it has a withholding certificate that identifies the payee as such an entity, indicates that the payee is the beneficial owner of the payment, and for a government or foreign central bank, indicates that the payee is not engaged in commercial activities with respect to the payments or accounts identified on the form. A withholding agent may treat a payee as an international organization without requiring a withholding certificate if the name of the payee is one that is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288f) and other facts surrounding the transaction reasonably indicate that the international organization is not receiving the payment as an intermediary on behalf of another person. A withholding agent may treat a payee as an exempt beneficial owner pursuant to a Model 1 IGA or Model 2 IGA if it has a withholding certificate that identifies the payee as such an entity and indicates that the payee is the beneficial owner of the payment.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation may treat a payee as a foreign government, government of a U.S. territory, international organization, or foreign central bank of issue if the payee provides a written statement that it is such an entity and the written statement indicates that the payee receives the payment as a beneficial owner (within the meaning provided in § 1.1471–6). A written statement provided by a foreign central bank of issue must also state that the foreign central bank of issue does not receive the payment in connection with a commercial activity as provided in § 1.1471–6(h).

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment, other than a payment of U.S. source FDAP income, with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a foreign government, government of a U.S. territory, international organization, or foreign central bank of issue if—

(*1*) The payee is generally known to the withholding agent to be, the payee's name and the facts surrounding the payment reasonably indicate, or the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that reasonably indicates that the payee is a foreign government or government of a U.S territory, a political subdivision of a foreign government or government of a U.S. territory, any wholly owned agency or instrumentality of any one or more of the foregoing, an international organization, a foreign central bank of issue, or the Bank for International Settlements; and

(*2*) The withholding agent does not know that the payee is not the beneficial owner, within the meaning of § 1.1471–6(b) through (e) (disregarding any presumption that a financial institution is assumed to be an intermediary absent documentation indicating otherwise) or a foreign central bank of issue receiving the payment in connection with a commercial activity.

(ii) *Identification of retirement funds*—(A) *In general.* A withholding agent may treat a payee as a retirement fund described in § 1.1471–6(f) if it has a withholding certificate in which the payee certifies that it is a retirement fund meeting the requirements of § 1.1471–6(f).

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as being made to a retirement fund described in § 1.1471–6(f) if it obtains a written statement in which the payee certifies that it is a retirement fund under the laws of its local jurisdiction meeting the requirements of § 1.1471–6(f) and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section). A withholding agent that makes a payment with respect to an offshore obligation may also treat the payment as made to a retirement fund if it obtains general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to establish that the payee is a retirement fund meeting the requirements of § 1.1471–6(f).

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation, may treat the payee as a retirement fund described in § 1.1471–6(f) if the withholding agent has general documentary evidence or preexisting account documentary evidence (as described in paragraphs (c)(5)(ii)(A) or (B)) that establishes that the payee is a foreign entity that qualifies as a retirement fund in the country in which the payee is organized.

(iii) *Identification of entities wholly owned by exempt beneficial owners.* A withholding agent may treat a payee as an entity described in § 1.1471–6(g) (referring to certain entities wholly owned by exempt beneficial owners) if the withholding agent has—

(A) A withholding certificate or, for a payment made with respect to an offshore obligation, a written statement that identifies the payee as an investment entity that is the beneficial owner of the payment;

(B) An owner reporting statement that contains the name, address, TIN (if any), chapter 4 status (identifying the type of exempt beneficial owner), and a description of the type of documentation (Form W–8 or other documentary evidence) provided to the withholding agent for every person that owns a direct equity interest, or a debt interest constituting a financial account, in the payee, and that is subject to the general rules applicable to all withholding statements described in paragraph (c)(3)(iii)(B)(*1*) of this section; and

(C) Documentation for every person identified on the owner reporting statement establishing, pursuant to the documentation requirements described in this paragraph (d)(9), that such person is an exempt beneficial owner (without regard to whether the person is a beneficial owner of the payment).

(10) *Identification of territory financial institutions*—(i) *Identification of territory financial institutions that are beneficial owners*—(A) *In general.* A withholding agent may treat a payee as a territory financial institution if the withholding agent has a withholding certificate identifying the payee as a territory financial institution that beneficially owns the payment. See paragraph (d)(11)(viii) of this section for rules for documenting territory NFFEs.

(B) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a territory financial institution if the withholding agent receives written notification, whether signed or not, that the payee is the beneficial owner of the payment and the withholding agent has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee was organized or incorporated under the laws of any U.S. territory and is a depository institution, custodial

institution, or specified insurance company.

(ii) *Identification of territory financial institutions acting as intermediaries or that are flow-through entities.* A withholding agent may treat a payment as being made to a territory financial institution that is acting as an intermediary or that is a flow-through entity if the withholding agent has an intermediary withholding certificate or flow-through withholding certificate as described in paragraph (c)(3)(iii) of this section that identifies the person who receives the payment as a territory financial institution. A withholding agent that obtains the documentation described in the preceding sentence may treat the territory financial institution as the payee if the withholding certificate contains a certification that the territory financial institution agrees to be treated as a U.S. person with respect to the payment. If the withholding certificate does not contain such a certification, then the withholding agent must treat the person on whose behalf the territory financial institution receives the payment as the payee. See paragraph (c)(3)(iii) of this section for additional documentation that must accompany the withholding certificate of the territory financial institution in this case.

(iii) *Reason to know.* In addition to the general standards of knowledge described in paragraph (e) of this section, a withholding agent will have reason to know that an entity is not a territory financial institution if the withholding agent has: a current residence or mailing address, either in the entity's account files or on documentation provided by the payee, for the entity that is outside the U.S. territory in which the entity claims to be organized; a current telephone number for the payee that has a country code other than the country code for the U.S. territory or has an area code other than the area code(s) of the applicable U.S. territory and no telephone number for the payee in the applicable U.S. territory; or standing instructions for the withholding agent to pay amounts from its account to an address or account outside the applicable U.S. territory. A withholding agent that has knowledge of a current address, current telephone number, or standing payment instructions for the entity outside of the applicable U.S. territory, may nevertheless treat the entity as a territory financial institution if it obtains documentary evidence that establishes that the entity was organized in the applicable U.S. territory.

(11) *Identification of excepted NFFEs*—(i) *Identification of excepted nonfinancial group entities*—(A) *In general.* A withholding agent may treat a payee as an excepted nonfinancial group entity described in § 1.1471–5(e)(5)(i) if the withholding agent has a withholding certificate identifying the payee as such an entity.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an excepted nonfinancial group entity described in § 1.1471–5(e)(5)(i) if the withholding agent obtains:

(*1*) A written statement in which the payee certifies that it is a foreign entity operating primarily as an excepted nonfinancial group entity for a group that primarily engages in a business other than a financial business described in § 1.1471–5(e)(4) and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(*2*) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to establish that the payee is an excepted nonfinancial group entity described in § 1.1471–5(e)(5)(i).

(ii) *Identification of excepted nonfinancial start-up companies*—(A) *In general.* A withholding agent may treat a payee as an excepted nonfinancial start-up company described in § 1.1471–5(e)(5)(ii) if the withholding agent has a withholding certificate that identifies the payee as a start-up company that intends to operate as other than a financial institution and the withholding certificate provides a formation date for the payee that is less than 24 months prior to the date of the payment.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an excepted nonfinancial start-up company described in § 1.1471–5(e)(5)(ii) if it obtains—

(*1*) A written statement from the payee in which the payee certifies that it is a foreign entity formed for the purpose of operating a business other than that of a financial institution and provides the entity's formation date which was less than 24 months prior to the date of the payment and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(*2*) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that provides the withholding agent with sufficient information to establish that the payee is a foreign entity other than a financial institution and has a formation date which is less than 24 months prior to the date of the payment.

(C) *Exception for preexisting offshore obligations.* A withholding agent may treat a payment made with respect to an offshore obligation that is also a preexisting obligation as made to a start-up company described in § 1.1471–5(e)(5)(ii) if the withholding agent has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that provides the withholding agent sufficient information to establish that the payee is, or intends to be, engaged in a business other than as a financial institution and establishes that the payee is a foreign entity that was organized less than 24 months prior to the date of the payment.

(iii) *Identification of excepted nonfinancial entities in liquidation or bankruptcy*—(A) *In general.* A withholding agent may treat a payee as an excepted nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471–5(e)(5)(iii), if the withholding agent has a withholding certificate that identifies the payee as such an entity and the withholding agent has no knowledge that the payee has claimed to be such an entity for more than three years. A withholding agent may continue to treat a payee as an entity described in this paragraph for longer than three years if it obtains, in addition to a withholding certificate, documentary evidence such as a bankruptcy filing or other public document that supports the payee's claim that it remains in liquidation or bankruptcy.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an excepted nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471–5(e)(5)(iii) if the withholding agent has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or a copy of a bankruptcy filing, or similar documentation, establishing that the payee is a foreign entity in liquidation or bankruptcy and establishing that prior to the liquidation or bankruptcy filing, the payee was engaged in a business other than that of a financial institution. A withholding agent may also treat the payee with respect to an offshore obligation as an excepted

nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471–5(e)(5)(iii), if the withholding agent obtains a written statement stating that the payee is a foreign entity in the process of liquidating or reorganizing with the intent to continue or recommence its former business as a nonfinancial institution, the withholding agent has no knowledge that the payee has claimed to be such an entity for more than three years (unless the withholding agent has obtained additional documentary evidence to support the claim that the entity remains in bankruptcy or liquidation), and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat a payee as an excepted nonfinancial entity in liquidation or bankruptcy, as described in § 1.1471–5(e)(5)(iii), if the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that unambiguously indicates that the payee is not a financial institution and is a foreign entity that entered liquidation or bankruptcy within the three years preceding the date of the payment.

(iv) *Identification of section 501(c) organizations*—(A) *In general.* A withholding agent may treat a payee as a 501(c) organization described in § 1.1471–5(e)(5)(v) if the withholding agent can reliably associate the payment with a withholding certificate that identifies the payee as a section 501(c) organization and the payee provides either a certification that the payee has been issued a determination letter by the IRS that is currently in effect concluding that the payee is a section 501(c) organization and providing the date of the letter, or a copy of an opinion from U.S. counsel certifying that the payee is a section 501(c) organization (without regard to whether the payee is a foreign private foundation).

(B) *Reason to know.* A withholding agent must cease to treat a foreign organization's claim that it is a section 501(c) organization as valid beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is not a section 501(c) organization or 90 days after the date on which the IRS gives notice to the public that such foreign organization is not a section 501(c) organization. Further, a withholding agent will have reason to know that a payee is not a section 501(c) organization if it has determined, pursuant to its AML due diligence, that the payee has beneficial owners (as defined for purposes of the AML due diligence).

(v) *Identification of non-profit organizations*—(A) *In general.* A withholding agent may treat a payee as a non-profit organization described in § 1.1471–5(e)(5)(vi) if the withholding agent has a withholding certificate that identifies the payee as a non-profit organization.

(B) *Exception for offshore obligations.* A withholding agent may treat a payment with respect to an offshore obligation as made to a nonprofit organization without obtaining a withholding certificate for the payee if the payee—

(*1*) Has provided a written statement indicating that the payee is a non-profit organization described in § 1.1471–5(e)(5)(vi) and, with respect to a payment of U.S. source FDAP income, has provided documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(*2*) Is required to be reported by the withholding agent as a tax-exempt charitable organization under the information reporting laws of the country in which the account is maintained or is permitted an exemption from withholding due to its status as a tax exempt charitable organization under the laws of the country in which the account is maintained, and the withholding agent obtains general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) establishing that the payee was organized for charitable purposes in the same country in which the account is maintained by the withholding agent for the purposes described in § 1.1471–5(e)(5)(vi) and that the payee has no beneficial owners (as that term is used for purposes of that country's AML due diligence).

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a nonprofit organization described in § 1.1471–5(e)(5)(vi) if the payee—

(*1*) Provides a letter of local counsel that certifies that the payee qualifies as a tax-exempt entity in its local jurisdiction; or

(*2*) Provides a letter issued by the tax authority of the country in which the payee is organized or a statement provided on the Web site of such tax authority indicating that the payee is a tax-exempt entity or charitable organization in the payee's country of organization.

(D) *Reason to know.* A withholding agent will have reason to know that a payee is not a nonprofit organization if it has determined, pursuant to its AML due diligence, that the payee has beneficial owners (as defined for purposes of the AML due diligence).

(vi) *Identification of NFFEs that are publicly traded corporations.* A withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(i) (applying to an entity the stock of which is regularly traded on an established securities market) if it has a withholding certificate that certifies that the payee is such an entity and provides the name of a securities exchange upon which the payee's stock is regularly traded.

(A) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an NFFE described in § 1.1472–1(c)(1)(i) if the withholding agent obtains—

(*1*) A written statement that the payee is a foreign corporation that is not a financial institution, that its stock is regularly traded on an established securities market, the name of one of the exchanges upon which the payee's stock is traded, and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(*2*) Any documentation establishing that the payee is listed on a public securities exchange or on a stock market index and general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) establishing that the payee is a foreign corporation other than a financial institution.

(B) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an entity described in § 1.1472–1(c)(1)(i) if the withholding agent has any documentation confirming that the payee is listed on a public securities exchange or on a stock market index and preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee is a foreign corporation other than a financial institution.

(vii) *Identification of NFFE affiliates.* A withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(ii) (applying to an affiliate of an entity the stock of which is regularly

traded on an established exchange) if it has a beneficial owner withholding certificate that identifies the payee as a foreign corporation that is an affiliate of an entity, described § 1.1472–1(c)(1)(i), whose stock is regularly traded on an established exchange and provides the name of the entity that is regularly traded and one of the exchanges upon which the entity's stock is listed.

(A) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as being made to an NFFE described in § 1.1472–1(c)(1)(ii) if the withholding agent obtains—

(*1*) Documentary evidence or other information confirming that the payee is affiliated with an entity listed on a public securities exchange or on a stock market index and general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that indicates that the payee is a foreign corporation other than a financial institution; or

(*2*) A written statement that the payee is a foreign corporation that is not a financial institution, that the payee is an affiliate of another nonfinancial entity whose stock is regularly traded on an established securities exchange, providing the name of the payee's affiliate and one of the exchanges upon which the affiliate's stock is traded and, in the case of a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(B) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an NFFE described in § 1.1472–1(c)(1)(ii) if the withholding agent has—

(*1*) Documentation or other information confirming that the payee is affiliated with a corporation that is listed on a public securities exchange or on a stock market index;

(*2*) Preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that unambiguously indicates that the payee is a corporation that is not a financial institution; and

(*3*) In the case of a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(viii) *Identification of excepted territory NFFEs.* A withholding agent may treat a payee as an excepted territory NFFE described in § 1.1472–1(c)(1)(iii) if it has a withholding certificate that identifies the payee as an NFFE that was organized in a U.S. territory and includes a certification for chapter 4 purposes that all of its owners are bona fide residents of that U.S. territory.

(A) *Exception for payments made prior to January 1, 2017, with respect to preexisting obligations of $1,000,000 or less (transitional).* A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding $1,000,000 on December 31, 2013, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may treat a payee as an excepted territory NFFE described in § 1.1472–1(c)(1)(iii) if the withholding agent—

(*1*) Has a pre-FATCA Form W–8 identifying the payee as a foreign entity with a permanent residence address in a U.S. territory; and

(*2*) Has general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section), preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section), or a prospectus establishing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company; and

(*3*) Is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and as part of its AML due diligence has not identified any owners of the payee that are not bona fide residents of the U.S. territory in which the payee is organized.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as being made to an excepted territory NFFE described in § 1.1472–1(c)(1)(iii) if it has—

(*1*) A written statement providing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company, was organized in a U.S. territory, and is wholly owned by one or more bona fide residents of that U.S. territory, and, with respect to a payment of U.S. source FDAP income, the written statement must indicate that the payee is the beneficial owner of the income and be accompanied by documentary evidence supporting a claim of foreign status (as described in paragraph (c)(5)(i) of this section); or

(*2*) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) or a prospectus establishing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company, establishing that the payee was organized in a U.S. territory, and establishing that the payee is wholly owned by one or more bona fide residents of that U.S. territory.

(C) *Exception for preexisting offshore obligations of $1,000,000 or less.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding $1,000,000 on December 31, 2013, (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to determine whether the owners of the payee are bona fide residents of the U.S. territory in which the payee is organized, in lieu of obtaining a written statement or documentary evidence described in paragraph (d)(11)(viii)(B) of this section. The preceding sentence applies only if the withholding agent is subject, with respect to such account, to the laws of a FATF-compliant jurisdiction and has identified the residence of the owners. The withholding agent relying upon this paragraph (d)(11)(viii)(C) must still obtain a written statement, documentary evidence, as provided in paragraph (d)(11)(viii)(B) of this section, or preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) establishing that the payee is an entity other than a depository institution, custodial institution, or specified insurance company organized in a U.S. territory.

(ix) *Identification of active NFFEs.* A withholding agent may treat a payee as an active NFFE described in § 1.1472–1(c)(1)(iv) if it has a withholding certificate identifying the payee as an active NFFE.

(A) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an active NFFE if the withholding agent has—

(*1*) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) providing sufficient information to determine that the payee is a foreign entity engaged in an active trade or business other than that of a financial institution; or

(*2*) A written statement stating that the payee is a foreign entity engaged in an active business other than that of a financial institution and, in the case of a payment of U.S. source FDAP income,

documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(B) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an active NFFE if the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) that unambiguously indicates that the payee is a foreign entity engaged in a trade or business other than that of a financial institution and, in the case of a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(C) *Limit on reason to know.* A withholding agent relying on documentary evidence to determine that a payee is an active NFFE will not be required to determine that the payee meets the income and asset thresholds but rather must determine only that the payee is primarily engaged in a business other than that of a financial institution.

(12) *Identification of passive NFFEs.* A withholding agent may treat a payment as having been made to a passive NFFE if it has a withholding certificate that identifies the payee as a passive NFFE.

(i) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as made to a passive NFFE if the withholding agent has—

(A) General documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) for the payee providing sufficient information to determine that the payee is a foreign entity that is not a financial institution; or

(B) A written statement that the payee is a foreign entity that is not a financial institution and, for a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(ii) *Special rule for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a passive NFFE if the withholding agent has preexisting account documentary evidence (as described in paragraph (c)(5)(ii)(B) of this section) providing sufficient information to determine that the payee is a foreign entity that is not a financial institution and, with respect to a payment of U.S. source FDAP income, documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

(iii) *Required owner certification for passive NFFEs*—(A) *In general.* Unless it is a WP or WT, a passive NFFE will be required to provide to the withholding agent either a written certification (contained on a withholding certificate or in a written statement) that it does not have any substantial U.S. owners or the name, address, and TIN of each substantial U.S. owner of the NFFE to avoid being withheld upon under § 1.1472–1(b).

(B) *Exception for preexisting obligations of $1,000,000 or less (transitional).* A withholding agent that makes a payment prior to January 1, 2017, with respect to a preexisting obligation with a balance or value not exceeding $1,000,000 on December 31, 2013, and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent's AML due diligence rules). A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value not exceeding $1,000,000 on December 31, 2013, (or the effective date of the FFI agreement for a withholding agent that is a participating FFI) and the last day of each subsequent calendar year preceding the payment, applying the aggregation principles of § 1.1471–5(b)(4)(iii), may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of obtaining the certification or information required in paragraph (d)(12)(iii)(A) of this section if the withholding agent is subject, with respect to such obligation, to the laws of a FATF-compliant jurisdiction and has identified the residence of any controlling persons (within the meaning of the withholding agent's AML due diligence rules).

(e) *Standards of knowledge*—(1) *In general.* The standards of knowledge discussed in this section apply for purposes of determining the chapter 4 status of payees, beneficial owners, intermediaries, flow-through entities, and persons that own an interest in an owner-documented FFI. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under section 1474 and the regulations under that section if it fails to withhold the correct amount despite knowing or having reason to know the amount required to be withheld. A withholding agent that cannot reliably associate the payment with documentation and fails to act in accordance with the presumption rules set forth in paragraph (f) of this section may also be liable for tax, interest, and penalties. See paragraph (e)(4) in this section for the specific standards of knowledge applicable to a person's specific claims of chapter 4 status.

(2) *Notification by the IRS.* A withholding agent that has received notification by the IRS that a claim of status as a U.S. person, a participating FFI, a deemed-compliant FFI, or other entity entitled to a reduced rate of withholding under section 1471 or 1472 is incorrect knows that such a claim is incorrect beginning on the date that is 30 business days after the date the notice is received.

(3) *Participating FFIs and registered deemed-compliant FFIs*—(i) *In general.* A withholding agent that has received a payee's claim of status as a participating FFI or registered deemed-compliant FFI and that is required under paragraph (d)(4) of this section to confirm that the branch of the FFI claiming status as a participating FFI or registered-deemed compliant FFI has a GIIN that appears on the published IRS FFI list, has reason to know that such payee is not such a financial institution if the payee's name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 calendar days of the date that the claim is made. The withholding agent will also have reason to know that an FFI is either a limited branch or limited FFI (and, thus, not a participating FFI or registered-deemed compliant FFI) if the withholding agent has a permanent residence address or mailing address for the FFI that is in a country other than the country that in which the FFI claims to be a participating FFI or registered deemed-compliant FFI or the withholding agent makes a payment to the FFI at an address outside of the country in which the FFI claims to be a participating FFI or registered deemed-compliant FFI. A payee whose registration with the IRS as a participating FFI or a registered deemed-compliant FFI is in process but has not yet received a GIIN may provide

a withholding agent with a Form W–8 claiming the chapter 4 status it applied for and writing ''applied for'' in the box for the GIIN. In such case, the FFI will have 90 calendar days from the date of its claim to provide the withholding agent with its GIIN and the withholding agent will have 90 calendar days from the date it receives the GIIN to verify the accuracy of the GIIN against the published IRS FFI list before it has reason to know that the payee is not a participating FFI or registered deemed-compliant FFI. If an FFI is removed from the published IRS FFI list, the withholding agent knows that such FFI is not a participating FFI or registered deemed-compliant FFI on the earlier of the date that the withholding agent discovers that the FFI has been removed from the list or the date that is one year from the date the FFI's GIIN was actually removed from the list.

(ii) *Special rules for reporting Model 1 FFIs.* Prior to January 1, 2015, a withholding agent that receives an FFI's claim of status as a reporting Model 1 FFI will not be required to confirm that the FFI has a GIIN that appears on the published IRS FFI list. A withholding agent will have reason to know that the FFI is not a reporting Model 1 FFI if the withholding agent does not have a permanent residence address for the FFI, or an address of the relevant branch of the FFI, located in the country in which the FFI claims to be a reporting Model 1 FFI or the withholding agent is directing a payment to a branch of the FFI that is not located in the country in which the FFI claims to be a reporting Model 1 FFI.

(4) *Reason to know.* A withholding agent shall be considered to have reason to know that a claim of chapter 4 status is unreliable or incorrect if its knowledge of relevant facts or statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made. For accounts opened on or after January 1, 2014, a withholding agent will also be considered to have reason to know that a claim of chapter 4 status is unreliable or incorrect if any information contained in its account opening files or other customer account files, including documentation collected for AML due diligence purposes, conflicts with the payee's claim of chapter 4 status. In addition to the general standards of knowledge set forth in this paragraph (e) regarding a person's claim of chapter 4 status, a withholding agent is also required to apply any specific standards of knowledge applicable to the chapter 4 status claimed as set forth in paragraph (d) of this section. A withholding agent that has relied upon documentation that is valid pursuant to paragraph (c) to treat a person as a foreign person, however, will have reason to know that a person's claim of status as a foreign person is inaccurate only if there are U.S. indicia associated with the person, as described in paragraphs (e)(4)(ii) through (vi) of this section, for which appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in this paragraph (e) has not been obtained.

(i) *Information conflicting with person's claim of chapter 4 status.* A withholding certificate, written statement, or documentary evidence is unreliable or incorrect if there is information on the face of the documentation or in the withholding agent's account files that conflicts with the person's claim regarding its chapter 4 status. For example, a withholding agent will have reason to know that a person's claim that it is an excepted NFFE is unreliable or incorrect if the withholding agent has a financial statement or credit report that indicates that the person is engaged in business as a financial institution or if documentation submitted by the person indicates that the person is acting as an intermediary with respect to the payment and, thus, is not a beneficial owner for purposes of § 1.1472–1(c)(1). Further, a withholding agent that has classified the person as engaged in a particular type of business in its own records, such as through a standard industrial classification code, will have reason to know that that the chapter 4 status claimed by the person is unreliable or incorrect if the claim conflicts with the withholding agent's internal classification.

(ii) *Specific standards of knowledge applicable to withholding certificates*—(A) *In general.* A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the person, the withholding certificate contains any information that is inconsistent with the person's claim, the withholding agent has other account information that is inconsistent with the person's claim, or the withholding certificate lacks information necessary to establish entitlement to an exemption from withholding for chapter 4 purposes. A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent. Paragraphs (e)(4)(ii)(B) through (D) of this section do not apply to a withholding certificate provided by a participating FFI, a registered deemed-compliant FFI, or a sponsored FFI, described in § 1.1471–5(f)(2)(iii), if the certificate contains a GIIN for the FFI or sponsor that the withholding agent verifies on the current published IRS FFI list as provided in paragraph (e)(3) of this section.

(B) *Classification of U.S. status, U.S. address, or U.S. telephone number.* A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding agent has classified the person as a U.S. person in its customer files, the withholding certificate has a current permanent residence address in the United States, the withholding certificate has a current mailing address in the United States, the withholding agent has a current residence or mailing address as part of its account information that is an address in the United States, or the person notifies the withholding agent of a new residence or mailing address in the United States (whether or not provided on a withholding certificate). A withholding agent also has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding agent has a current telephone number for the person in the United States and has no telephone number for the person outside of the United States. Notwithstanding the foregoing, a withholding agent may rely upon a withholding certificate to establish the person's status as a foreign person despite knowing that the person has any of the U.S. indicia described in this paragraph (e)(4)(ii)(B) if it may do so under the provisions of paragraphs (e)(4)(ii)(B)(*1*) and (*2*) of this section.

(*1*) *Presumption of individual's foreign status.* A withholding agent may treat an individual that has U.S. indicia described in paragraph (e)(4)(ii)(B) of this section as a foreign person if the individual has provided a withholding certificate and—

(*i*) The withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section) that does not contain a U.S. address and the individual provides the withholding agent with a reasonable written explanation supporting the claim of foreign status;

(*ii*) For a payment made with respect to an offshore obligation, the withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described

in paragraph (c)(5)(i) of this section), that does not contain a U.S. address; or

(*iii*) For a payment made with respect to an offshore obligation, the withholding agent classifies the individual as a resident of the country in which the obligation is maintained, the withholding agent is required to report payments made to the individual annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(*2*) *Presumption of entity's foreign status.* A withholding agent may treat an entity that has U.S. indicia described in paragraph (e)(4)(ii)(B) of this section as a foreign person if the entity has provided a withholding certificate and—

(*i*) The withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section) that substantiates that the entity is actually organized or created under the laws of a foreign country; or

(*ii*) For a payment made with respect to an offshore obligation, the withholding agent classifies the entity as a resident of the country in which the obligation is maintained, the withholding agent is required to report payments made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(C) *U.S. place of birth*—(*1*) *Accounts opened on or after January 1, 2014.* For accounts opened on or after January 1, 2014, a withholding agent has reason to know that a withholding certificate indicating foreign status provided by an individual is unreliable or incorrect if the withholding agent has, either on accompanying documentation or as part of its account information, an unambiguous indication of a place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. place of birth, if the withholding agent has no knowledge that the individual has any other U.S. indicia described in paragraph (e)(4)(ii) of this section and the withholding agent obtains a copy of the individual's Certificate of Loss of Nationality of the United States. A withholding agent may also treat the individual as a foreign person, notwithstanding the U.S. place of birth and any other U.S. indicia described in paragraph (e)(4)(ii) of this section, if the withholding agent obtains a non-U.S. passport or other government-issued identification that is evidence of citizenship in a country other than the United States and either a copy of the individual's Certificate of Loss of Nationality of the United States, or a reasonable written explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(*2*) *Preexisting obligations.* For a payment made with respect to a preexisting obligation, a withholding agent will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with an individual. However, if the withholding agent, on or after January 1, 2014, reviews documentation that contains a U.S. birth place for an individual that is treated as a foreign person or is notified that the individual has a U.S. place of birth, then the account will be considered to have experienced a change in circumstances as of the date that the withholding agent reviewed the documentation and the withholding agent will be considered to have reason to know that the individual is a U.S. person. See paragraph (c)(6)(ii)(E) of this section for rules regarding the time period allowed to cure a change in circumstances.

(D) *Standing instructions with respect to offshore obligations.* A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if it is provided with respect to an offshore obligation and the person has standing instructions directing the withholding agent to pay amounts to an address or an account maintained in the United States. The withholding agent may rely upon the withholding certificate to establish the person's status as a foreign person, however, if the person provides documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section).

(iii) *Specific standard of knowledge applicable to written statements.* A withholding agent must apply the standards of knowledge applicable to withholding certificates, as set forth in paragraph (e)(4)(i) and (ii) of this section, when determining whether it can rely on a written statement.

(iv) *Specific standard of knowledge applicable to documentary evidence*—(A) *In general.* A withholding agent may not treat documentary evidence provided by a person as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by an individual and the photograph or signature on the documentary evidence, if any, does not match the appearance or signature of the person presenting the document. A withholding agent may not rely on documentary evidence to reduce the rate of withholding that would otherwise apply under the presumption rules in paragraph (f) of this section if the documentary evidence contains information that is inconsistent with the person's claim as to its chapter 4 status, the withholding agent has other account information that is inconsistent with the person's claim, or the documentary evidence lacks information necessary to establish the person's chapter 4 status.

(B) *Classification of U.S. status, U.S. address, or U.S. telephone number.* A withholding agent may not treat documentary evidence provided by a person as valid for purposes of establishing the person's foreign status if the withholding agent does not have a permanent residence address for the person. The previous sentence will not apply, however, to a withholding agent that is making a payment with respect to an offshore obligation. Documentary evidence is unreliable or incorrect to establish a person's status as a foreign person if the withholding agent has classified the person as a U.S. person in its customer files, the withholding agent has a current residence or mailing address (whether or not on the documentation) for the person in the United States, if the person notifies the withholding agent of a new address in the United States, or if the withholding agent has a current telephone number for the person in the United States and has no telephone number for the person outside of the United States.

Notwithstanding the foregoing, a withholding agent may rely on documentary evidence to establish the person's status as a foreign person despite knowing that the person has any of the U.S. indicia described in this paragraph (e)(4)(iv)(B) if it may do so under the provisions of paragraphs (e)(4)(iv)(B)(*1*) and (*2*) of this section.

(*1*) *Presumption of individual's foreign status.* A withholding agent may treat an individual that has U.S. indicia described in paragraph (e)(4)(iv)(B) of this section as a foreign person if the individual has provided documentary evidence and—

(*i*) The withholding agent has in its possession, or obtains, additional documentary evidence establishing

foreign status (as described in paragraph (c)(5)(i) of this section), that does not contain a U.S. address, and the individual provides the withholding agent with a reasonable written explanation supporting the claim of foreign status;

(*ii*) The withholding agent has in its possession, or obtains, a valid beneficial owner withholding certificate that contains a permanent residence address outside the United States and a mailing address, if any, outside the United States (or, if a mailing address is inside the United States, the direct account holder provides a reasonable written explanation supporting the individual's claim of foreign status); or

(*iii*) For a payment made with respect to an offshore obligation, the withholding agent has in its possession, or obtains, a beneficial owner withholding certificate that contains a permanent residence address outside the United States.

(*2*) *Presumption of entity's foreign status.* A withholding agent may treat an entity that has U.S. indicia described in paragraph (e)(4)(iv)(B) of this section as a foreign person if the entity has provided documentary evidence and—

(*i*) The withholding agent has in its possession, or obtains, documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section) that substantiates that the entity is actually organized or created under the laws of a foreign country;

(*ii*) The withholding agent obtains a valid withholding certificate that contains a permanent residence address outside the United States and a mailing address, if any, outside the United States; or

(*iii*) For a payment made with respect to an offshore obligation, the withholding agent classifies the entity as a resident of the country in which the account is maintained, the withholding agent is required to report payments made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(C) *U.S. place of birth*—(*1*) *Accounts opened on or after January 1, 2014.* For accounts opened on or after January 1, 2014, a withholding agent has reason to know that documentary evidence provided to demonstrate an individual's status as a foreign person is unreliable or incorrect if the documentation contains a U.S. birth place for the individual or the withholding agent has, as part of its account information, a place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. birth place, if the withholding agent has no knowledge that the individual has any other U.S. indicia described in paragraph (e)(4)(iv) of this section and the withholding agent obtains a copy of the individual's Certificate of Loss of Nationality of the United States. A withholding agent may also treat the individual as a foreign person, notwithstanding the U.S. birth place and any other U.S. indicia described in paragraph (e)(4)(iv) of this section, if the withholding agent obtains a withholding certificate from the individual that establishes the payee's foreign status and either a copy of the individual's Certificate of Loss of Nationality of the United States or a reasonable written explanation of the individual's renunciation of U.S. citizenship or the reason the individual did not obtain U.S. citizenship at birth.

(*2*) *Preexisting obligations.* For a payment made with respect to a preexisting obligation, a withholding agent will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with an individual. However, if the withholding agent, on or after January 1, 2014, reviews documentation that contains a U.S. place of birth for the individual that is treated as a foreign person or is notified that the individual has a U.S. place of birth, then the account will be considered to have experienced a change in circumstances as of the date that the withholding agent reviewed the documentation and the withholding agent will be considered to have reason to know that the individual is a U.S. person. See paragraph (c)(6)(ii)(E) of this section for rules regarding the time period allowed to cure a change in circumstances.

(D) *Standing Instructions.* With respect to an offshore obligation, documentary evidence is unreliable or incorrect as an indication of a person's status as a foreign person if the person has standing instructions directing the withholding agent to pay amounts to an address or an account maintained in the United States. The withholding agent may treat the person as a foreign person, however, if the person provides a withholding certificate and documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section), to the extent such documentary evidence was not already provided.

(E) *Standards of knowledge applicable to certain types of documentary evidence*—(*1*) *Financial statement.* A withholding agent that obtains a financial statement for purposes of establishing that a foreign payee meets a certain asset threshold will have reason to know that the chapter 4 status claimed is inaccurate only if the total assets shown on the financial statement for the payee, and if relevant the payee's expanded affiliated group, are not within the permissible thresholds or the footnotes to the financial statement indicate that the payee is not a foreign entity or is not a type of FFI eligible for the chapter 4 status claimed. A withholding agent that obtains a financial statement for purposes of establishing that the payee is an active NFFE will be required to review the balance sheet and income statement to determine whether the payee meets the income and asset thresholds set forth in § 1.1472–1(c)(1)(iv) and the footnotes of the financial statement for an indication that the payee is not a foreign entity or is a financial institution. A withholding agent that obtains a financial statement for purposes of establishing a chapter 4 status for a payee that does not require the payee to meet an asset or income threshold will be required to review only the footnotes to the financial statement to determine whether the financial statement supports the claim of chapter 4 status. A withholding agent that is not relying upon a financial statement to establish the chapter 4 status of the payee (for example because it has other documentation that establishes the payee's chapter 4 status) is not required to independently evaluate the financial statement solely because the withholding agent also has collected the financial statement in the course of its account opening or other procedures.

(*2*) *Organizational documents.* A withholding agent that obtains organizational documents for an entity solely for the purpose of supporting the chapter 4 status claimed will only be required to review the document sufficiently to establish that the entity is a foreign person and that the purposes for which the entity was formed and its basic activities appear to be of a type consistent with the chapter 4 status claimed, unless otherwise specified in paragraph (d) of this section. A withholding agent that obtains organizational documents for the purpose of establishing that an entity has a particular chapter 4 status will only be required to review the document to the extent needed to establish that the entity is a foreign person, that the requirements applicable to the particular chapter 4 status are

met, and that the document was executed, but will not be required to review the remainder of the document.

(v) *Specific standards of knowledge applicable when only documentary evidence is a code or classification described in paragraph (c)(5)(ii)(B) of this section.* A withholding agent may not rely upon a standard industry code or classification described in paragraph (c)(5)(ii)(B) of this section to treat an entity as having a foreign chapter 4 status if there are U.S. indicia described in paragraph (e)(4)(v)(A) of this section associated with the entity, unless such U.S. indicia are cured in the manner set forth in paragraph (e)(4)(v)(B) of this section.

(A) *U.S. indicia for entities.* The term *U.S. indicia* when used with respect to an entity includes, for purposes of this paragraph (e)(4)(v) any of the following—

(*1*) Classification of an account holder as a U.S. resident in the withholding agent's customer files;

(*2*) A current U.S. residence address or U.S. mailing address;

(*3*) With respect to an offshore obligation, standing instructions to pay amounts to a U.S. address or an account maintained in the United States;

(*4*) A current telephone number for the entity in the United States but no telephone number for the entity outside of the United States;

(*5*) A current telephone number for the entity in the United States in addition to a telephone number for the entity outside of the United States;

(*6*) A power of attorney or signatory authority granted to a person with a U.S. address; and

(*7*) An ''in-care-of'' address or ''hold mail'' address that is the sole address provided for the entity.

(B) *Documentation required to cure U.S. indicia.* A withholding agent may rely upon a code or classification described in paragraph (c)(5)(ii)(B) of this section to treat an entity as having a foreign chapter 4 status if there are U.S. indicia associated with the entity and the withholding agent obtains the relevant documentation described in this paragraph (e)(4)(v)(B).

(*1*) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(*1*) through (*4*) of this section associated with the entity, the withholding agent may treat the entity as a foreign person only if the withholding agent obtains a withholding certificate for the entity and one form of documentary evidence, described in paragraph (c)(5) of this section that establishes the entity's status as a foreign person (such as a certificate of incorporation).

(*2*) If there are U.S. indicia described in paragraphs (e)(4)(v)(A)(*1*) to (*4*) of this section associated with the entity and the withholding agent is making a payment with respect to an offshore obligation, the withholding agent may also treat the entity as a foreign person if the withholding agent obtains a withholding certificate for the entity and the withholding agent treats the entity as foreign for purposes of foreign tax reporting. A withholding agent will treat an entity as foreign for purposes of foreign tax reporting only if the withholding agent classifies the entity as a resident of the country in which the obligation is maintained, the withholding agent is required to report payments made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the account is maintained as part of that country's resident reporting requirements, and that country has an tax information exchange agreement or income tax treaty in effect with the United States.

(*3*) If there are indicia described in paragraphs (e)(4)(v)(A)(*5*) through (*7*) of this section associated with the entity, the withholding agent may treat the entity as a foreign person if the withholding agent obtains a withholding certificate or one form of documentary evidence, described in paragraph (c)(5) of this section, that establishes the entity's status as a foreign person (such as a certificate of incorporation).

(vi) *Specific standards of knowledge applicable to documentation received from intermediaries and flow-through entities*—(A) *In general.* A withholding agent that receives documentation from a payee through an intermediary or flow-through entity is required to review all documentation obtained with respect to the payee and all intermediaries and/or flow-through entities in the chain of payment, applying the standards of knowledge set forth in paragraph (e) of this section. This standard requires, but is not limited to, a withholding agent's compliance with the rules of paragraphs (e)(4)(vi)(A)(*1*) and (*2*) of this section.

(*1*) The withholding agent is required to review the withholding statement or owner reporting statement provided and may not rely on information in the statement to the extent the information does not support the claims made regarding the chapter 4 status of the person. For this purpose, a withholding agent may not treat a person as a foreign person if an address in the United States is provided for such person unless the withholding statement is accompanied by a valid withholding certificate and documentary evidence establishing foreign status (as described in paragraph (c)(5)(i) of this section).

(*2*) The withholding agent must review each withholding certificate and written statement in accordance with paragraph (e)(4)(i) through (iii) of this section and all documentary evidence in accordance with paragraph (e)(4)(i) and (iv) of this section, and must verify that the information contained on the withholding certificate, written statement, and documentary evidence is consistent with the information on the withholding statement or owner reporting statement. If there is a discrepancy between the withholding certificate, written statement, or documentary evidence and the withholding statement or owner reporting statement, the withholding agent may choose to rely on the withholding certificate, written statement, or documentary evidence provided such documentation is valid and the intermediary or flow-through entity does not indicate that the documentation is unreliable or inaccurate, or may apply the presumption rules set forth in paragraph (f) of this section. If the withholding agent chooses to rely upon the withholding certificate, written statement, or documentary evidence, the withholding agent is required to instruct the intermediary or flow-through entity to correct the withholding statement and confirm that the intermediary or flow-through entity does not know or have reason to know that the documentation is unreliable or inaccurate.

(B) *Limits on reason to know with respect to documentation received from participating FFIs and registered deemed-compliant FFIs that are intermediaries or flow-through entities.* A withholding agent that receives documentation from a participating FFI or registered deemed-compliant FFI that is not the payee must apply the requirements of paragraph (e)(4)(vi)(A) of this section, except that the withholding agent may rely upon the chapter 4 status provided by the participating FFI or registered deemed-compliant FFI in the withholding statement unless the withholding agent has information that conflicts with the chapter 4 status provided. If underlying documentation is provided for the payee and information in the documentation or in the withholding agent's records conflicts with the chapter 4 status claimed, the withholding agent will have reason to know that the chapter 4 status claimed is inaccurate. A withholding agent is not, however, required to verify information contained

in documentation provided by an intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI that is not facially incorrect and is not required to obtain supporting documentation for the payee in addition to a withholding certificate unless the withholding agent obtains such documentation for purposes of chapter 3 or 61 or unless the withholding agent knows that the review conducted by the participating FFI or registered deemed-compliant FFI for purposes of chapter 4 was not adequate. For example, a withholding agent that receives a withholding statement from a participating FFI that is an intermediary stating that the payee is a registered deemed-compliant FFI is only required to determine that any withholding certificate provided for the payee contains a GIIN and that the GIIN does not appear to be facially invalid (for example, because it does not contain the correct amount of digits), but is not subject to the requirements set forth in paragraph (e)(3) of this section. Similarly, a withholding agent that receives from a participating FFI that is a partnership a withholding statement claiming that the payee is an active NFFE will have reason to know that the claim is inaccurate if it receives a withholding statement that contains a U.S. address for the payee unless the partnership also provides a copy of documentation sufficient to cure the U.S. indicia in the manner set forth in paragraph (e) of this section or the withholding statement indicates that appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in paragraph (e) of this section has been obtained and provides details of such documentation, such as the type of documentation and an identification number of the person contained on the document.

(vii) *Limits on reason to know*—(A) *Scope of review for preexisting obligations of entities.* For purposes of determining whether a withholding agent that makes a payment with respect to a preexisting obligation to an entity has reason to know that the chapter 4 status applied to the entity is unreliable or incorrect, the withholding agent is only required to review information contradicting the chapter 4 status claimed if such information is contained in the current customer master file, the most recent withholding certificate, written statement, and documentary evidence for the person, the most recent account opening contract, the most recent documentation obtained by the withholding agent for purposes of AML due diligence or for other regulatory purposes, any power of attorney or signature authority forms currently in effect, and any standing instructions to pay amounts that is currently in effect.

(B) *Reason to know there is a U.S. telephone number associated with a preexisting obligation.* For payments made with respect to a preexisting obligation, a withholding agent, in lieu of searching the account files addressed in paragraph (e)(4)(vii)(A) of this section to determine whether the payee (or other person receiving the payment) has a current telephone number in the United States, may rely upon a search of its electronically searchable information associated with such person. However, the withholding agent may only rely upon the electronic search described in the previous sentence if the electronic search produces at least one current phone number for the person. If the electronic search does not produce a telephone number for the person, the withholding agent will be required, by January 1, 2017, to search the files described in paragraph (e)(4)(vii)(A) of this section to locate a current telephone number for the payee.

(C) *Reason to know there are U.S. indicia associated with preexisting offshore obligations.* For payments made outside of the United States with respect to an offshore obligation that is also a preexisting obligation and with respect to a withholding agent that had not already documented the payee for purposes of chapter 3 or 61, the withholding agent, in lieu of searching the account files addressed in paragraph (e)(4)(vii)(A) of this section to determine whether there are U.S. indicia associated with the payee (or other person who receives the payment), may instead rely upon a search of its electronically searchable information associated with such person. A withholding agent that relies upon an electronic search pursuant to this paragraph (e)(4)(vii)(C) must also review for U.S. indicia any documentation upon which the withholding agent relies to determine the chapter 4 status of the person and any documentation that the withholding agent had been relying upon to determine the residency or citizenship of the person.

(D) *Limits on reason to know for multiple obligations belonging to a single person.* A withholding agent that maintains multiple obligations for a single person will have reason to know that a chapter 4 status assigned to the person is inaccurate based on information contained in the customer files for another obligation held by the person only to the extent that—

(*1*) The withholding agent's computerized systems link the obligations by reference to a data element such as client number, EIN, or foreign tax identifying number and consolidates the customer information and payment information for the obligations; or

(*2*) The withholding agent has treated the obligations as consolidated obligations for purposes of sharing documentation pursuant to paragraph (c)(8) of this section or for purposes of treating one or more accounts as preexisting obligations.

(viii) *Reasonable explanation supporting claim of foreign status.* A reasonable explanation supporting a claim of foreign status for an individual means a written statement prepared by the individual (or the individual's completion of a checklist provided by the withholding agent), stating that the individual meets one of the requirements of paragraphs (e)(4)(viii)(A) through (D).

(A) The individual certifies that he or she—

(*1*) Is a student at a U.S. educational institution and holds the appropriate visa;

(*2*) Is a teacher, trainee, or intern at a U.S. educational institution or a participant in an educational or cultural exchange visitor program, and holds the appropriate visa;

(*3*) Is a foreign individual assigned to a diplomatic post or a position in a consulate, embassy, or international organization in the United States; or

(*4*) Is a spouse or unmarried child under the age of 21 years of one of the persons described in paragraphs (e)(4)(viii)(A) through (C) of this section;

(B) The individual provides information demonstrating that he or she has not met the substantial presence test set forth in § 301.7701(b)–1(c) of this chapter (for example, a written statement indicating the number of days present in the United States during the 3-year period that includes the current year);

(C) The individual certifies that he or she meets the closer connection exception described in § 301.7701(b)–2, states the country to which the individual has a closer connection, and demonstrates how that closer connection has been established; or

(D) With respect a payment entitled to a reduced rate of tax under a U.S. income tax treaty, the individual certifies that he or she is treated as a resident of a country other than the United States and is not treated as a U.S. resident or U.S. citizen for purposes of that income tax treaty.

(5) *Conduit financing arrangements.* The rules set forth in § 1.1441–7(f), regarding a withholding agent's liability for failing to withhold in the case in which the financing arrangement is a conduit financing arrangement, apply for purposes determining a withholding agent's liability for any withholding required under chapter 4.

(6) *Additional guidance.* The IRS may prescribe other circumstances for which a withholding certificate or documentary evidence to establish a payee's chapter 4 status is unreliable or incorrect in addition to the circumstances described in this paragraph (e).

(f) *Presumptions regarding chapter 4 status of the person receiving the payment in the absence of documentation*—(1) *In general.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (c) of this section) a payment with valid documentation may rely on the presumptions of this paragraph (f) to determine the status of the payee (or other person receiving the payment) as a U.S. or foreign person and such person's other relevant characteristics (for example, as a participating FFI or a nonparticipating FFI). See paragraph (f)(9) of this section for consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (f) or that has actual knowledge or reason to know facts that are contrary to the presumptions set forth in this paragraph (f).

(2) *Presumptions of classification as an individual or entity*—(i) *In general.* A withholding agent that cannot reliably associate a payment with a valid withholding certificate, or that has received valid documentary evidence, as described in paragraph (c)(5) of this section, but cannot determine a person's status as an individual or an entity from the documentary evidence, must presume that the person is an individual if the person appears to be an individual (for example, based on the person's name or information in the customer file). If the person does not appear to be an individual, then the person shall be presumed to be an entity. In the absence of reliable documentation, a withholding agent must treat a person that is presumed to be an entity as a trust or estate if the person appears to be a trust or estate (for example, based on the person's name or information in the customer file). In addition, a withholding agent must treat a person that is presumed to be a trust, or a person that is known to be a trust but for which the withholding agent cannot determine the type of trust, as a grantor trust if the withholding agent knows that the settlor of the trust is a U.S. person, and otherwise as a simple trust. In the absence of reliable indications that the entity is a trust or estate, the withholding agent must presume the person is a corporation if it can be treated as such under § 1.6049–4(c)(1)(ii)(A)(1). If the withholding agent cannot treat the person as a corporation under § 1.6049–4(c)(1)(ii)(A)(1), then the person must be presumed to be a partnership. See paragraph (a) of this section to determine, based upon the person's presumed entity type, whether the person is treated as a payee.

(ii) *Documentary evidence furnished for offshore obligation.* If the withholding agent receives valid documentary evidence, as described in paragraph (d) of this section, with respect to an offshore obligation from an entity but the documentary evidence does not establish the entity's classification as a corporation, trust, estate, or partnership, the withholding agent may presume that the entity is a corporation unless the withholding agent knows, or has reason to know, that the entity is not classified as a corporation for U.S. tax purposes. However, a withholding agent may not treat a person that is known or presumed to be a foreign corporation as a beneficial owner if the withholding agent knows, or has reason to know, that the person is not the beneficial owner with respect to the payment. For this purpose, a withholding agent will have reason to know that the person is not a beneficial owner if the documentary evidence indicates that the person is a bank, broker, intermediary, custodian, or other agent. A withholding agent may, however, treat such a person as a beneficial owner if the foreign person provides written notification, regardless of whether such notification is signed, that indicates the person is the beneficial owner of the payment.

(3) *Presumptions of U.S. or foreign status.* A payment that the withholding agent cannot reliably associate with a valid withholding certificate or documentary evidence is presumed to be made to a U.S. person, except as otherwise provided in this paragraph (f)(3). A payment that is reliably associated with documentation that indicates the payment is made to a U.S. person but does not indicate whether the person is a specified U.S. person, will be presumed to be made to a specified U.S. person unless the withholding agent can apply the presumption rules of § 1.6049–4(c)(1)(ii)(B), (C), (D), (E), (I), (J), (K), (L), or (N), to presume that the person is other than a specified U.S. person or the person's name reasonably indicates that the person is a bank (for example because it contains the word ''Bank'' or a foreign equivalent).

(i) *Payments to entities with indicia of foreign status.* If a withholding agent cannot reliably associate a payment with valid documentation sufficient to determine the person's status as a U.S. person or foreign person and the person is presumed to be an entity, the person is presumed to be a foreign person and not a U.S. person—

(A) If the withholding agent has actual knowledge of the person's EIN and that number begins with the two digits ''98'';

(B) If the withholding agent's communications with the person are mailed to an address in a foreign country;

(C) If the withholding agent has a telephone number for the person outside of the United States; or

(D) If the name of the person indicates that the entity is of a type that is on the per se list of foreign corporations contained in § 301.7701–2(b)(8)(i) of this chapter (other than a name which contains the designation ''corporation'' or ''company'').

(ii) *Payments to certain exempt recipients.* If the payment is made to an entity that is treated as an exempt recipient under the provisions of § 1.6049–4(c)(1)(ii)(A)(*1*), (F), (G), (H), (I), (M), (O), (P), or (Q) in the case of interest, or under similar provisions in chapter 61 applicable to the type of payment involved, the entity shall be presumed to be a foreign person.

(iii) *Payments with respect to offshore obligations.* A payment to an individual or an entity is presumed to be made to a foreign person if the payment is made outside of the United States with respect to an offshore obligation and the withholding agent does not know that the person is a U.S. person.

(4) *Presumption of chapter 4 status for a foreign entity.* A withholding agent that makes a payment to a foreign entity that it cannot reliably associate with a valid withholding certificate or documentary evidence sufficient to determine the chapter 4 status of that entity under paragraph (d) of this section (for example, as a participating FFI, nonparticipating FFI, or NFFE) must presume that the entity is a nonparticipating FFI.

(5) *Presumption of status as an intermediary.* If a withholding agent cannot reliably associate a payment with documentation to treat the payment as made to an intermediary, then the withholding agent must treat the payment as made to an intermediary if the withholding agent has

documentary evidence or other documentation that indicates, or the facts and circumstances of the transaction (including the name of the person who receives the payment or the presence of sub-account numbers not corresponding to accounts maintained by the withholding agent for such person) indicate that the person who receives the payment is a bank, broker, custodian, intermediary, or other agent, and the withholding agent has no knowledge that the person is receiving the payment for its own account. Any portion of a payment that the withholding agent must treat as made to a foreign intermediary (whether a QI or an NQI) but that the withholding agent cannot treat as reliably associated with valid documentation under the rules of paragraph (c) of this section, is presumed to be made to a nonparticipating FFI account holder of the intermediary. A person that the withholding agent is not required to treat as a foreign intermediary under this paragraph (f)(5) is presumed to be a person other than an intermediary.

(6) *Presumption of effectively connected income for payments to certain U.S. branches.* A withholding agent that makes a payment to a U.S. branch described in this paragraph (f)(6) may presume, in the absence of documentation indicating otherwise, that the U.S. branch is the payee and the payment is effectively connected with the conduct of a trade or business in the United States if the withholding agent has both an EIN for the branch and a valid GIIN for the home office establishing that the U.S. branch is a branch of a participating FFI or registered deemed-compliant FFI. A U.S. branch is described in this paragraph (f)(6) if it is a U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, a Territory, or the District of Columbia. A payment is treated as made to a U.S. branch of a foreign bank or foreign insurance company if the payment is credited to an account maintained in the United States in the name of a U.S. branch of the foreign person, or the payment is made to an address in the United States where the U.S. branch is located and the name of the U.S. branch appears on documents (in written or electronic form) associated with the payment (for example, the check mailed or letter addressed to the branch).

(7) *Joint payees*—(i) *In general.* If a withholding agent makes a payment to joint payees and cannot reliably associate the payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unidentified U.S. person. If any joint payee does not appear, by its name and other information contained in the account file, to be an individual, then the entire payment will be treated as made to a nonparticipating FFI. However, if one of the joint payees provides a Form W–9 furnished in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, the payment shall be treated as made to that payee.

(ii) *Exception for offshore obligations.* If a withholding agent makes a payment outside the United States with respect to an offshore obligation held by joint payees and cannot reliably associate a payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unknown foreign individual.

(8) *Rebuttal of presumptions.* A payee may rebut the presumptions described in this paragraph (f) by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

(9) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise*—(i) *In general.* Except as otherwise provided in this paragraph (f)(9), a withholding agent that withholds on a payment under section 1471 or 1472 in accordance with the presumptions set forth in this paragraph (f) shall not be liable for withholding under this section even if it is later established that the payee has a chapter 4 status other than the status presumed. A withholding agent that fails to report and withhold in accordance with the presumptions described in this paragraph (f) with respect to a payment that it cannot reliably associate with valid documentation shall be liable for tax, interest, and penalties. See § 1.1474–1(a) for the extent of a withholding agent's liability for failing to withhold in accordance with the presumptions described in this paragraph (f).

(ii) *Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.* Notwithstanding the provisions of paragraph (f)(9)(i) of this section, a withholding agent that knows or has reason to know that the status or characteristics of the person are other than what is presumed under this paragraph (f) may not rely on the presumptions described in this paragraph (f) to the extent that, if it determined the status of the person based on such knowledge or reason to know, it would be required to withhold (under this section or another withholding provision of the Code) an amount greater than would be the case if it relied on the presumptions described in this paragraph (f). In such a case, the withholding agent must rely on its knowledge or reason to know rather than on the presumptions set forth in this paragraph (f). Failure to do so shall result in liability for tax, interest, and penalties to the extent provided under § 1.1474–1(a).

(g) *Effective/applicability date.* This section generally applies on January 28, 2013. For other dates of applicability, see §§ 1.1471–3(d)(1); 1.1471–3(d)(4)(i), (ii), and (iv); 1.1471–3(d)(6)(v); 1.1471–3(d)(11)(viii)(A); 1.1471–3(d)(12)(iii)(B); 1.1471–3(e)(3)(ii); and 1.1471–3(e)(4)(vii)(B).

■ **Par. 8.** Section 1.1471–4 is added to read as follows:

§ 1.1471–4 FFI agreement.

(a) *In general.* An FFI agreement will be in effect in accordance with section 1471(b) if an FFI registers with the IRS pursuant to procedures prescribed by the IRS and agrees to comply with the terms of an FFI agreement. The FFI agreement will incorporate the requirements set forth in this section, any modifications set forth in an applicable Model 2 IGA, and any provisions applicable to a reporting Model 1 FFI.

(1) *Withholding.* A participating FFI is required to deduct and withhold tax with respect to payments made to recalcitrant account holders and nonparticipating FFIs to the extent required under paragraph (b) of this section. A participating FFI that is prohibited by foreign law from withholding as required under paragraph (b) of this section with respect to an account must close such account within a reasonable period of time or must otherwise block or transfer such account as described in paragraph (i) of this section.

(2) *Identification and documentation of account holders.* A participating FFI is required to obtain such information regarding each holder of each account maintained by the participating FFI to determine whether each account is a U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI in accordance with the due diligence procedures for identifying and documenting account

holders described in paragraph (c) of this section.

(3) *Reporting.* A participating FFI is required to report the information described in paragraph (d) of this section annually with respect to U.S. accounts under section 1471(c) and accounts held by recalcitrant account holders. A participating FFI must also comply with the filing requirements described in § 1.1474–1(c) and (d) to report payments that are chapter 4 reportable amounts paid to recalcitrant account holders and nonparticipating FFIs (including the transitional reporting of foreign reportable amounts paid to nonparticipating FFIs for calendar years 2015 and 2016 described in § 1.1474–1(d)(4)(iii)(C)). A participating FFI that is unable to obtain a waiver, if required by foreign law, to report an account as required under paragraph (d) of this section must close or transfer such account within a reasonable period of time as described in paragraph (i) of this section.

(4) *Expanded affiliated group.* Except as otherwise provided in Model 1 IGA or Model 2 IGA, in order for any FFI that is a member of an expanded affiliated group to be a participating FFI, each FFI that is a member of the expanded affiliated group must be a participating FFI or registered deemed-compliant FFI as described in paragraph (e) of this section. For a limited period described in paragraph (e)(2) or (e)(3) of this section, however, a branch of an FFI or an FFI that is a member of an expanded affiliated group and is unable under foreign law to satisfy the requirements of this section may instead obtain status as a limited branch of a participating FFI or limited FFI if the branch or FFI meets the requirements set forth in paragraph (e)(2) or (e)(3) of this section (as applicable).

(5) *Verification.* A participating FFI is required to adopt a compliance program as described in paragraph (f) of this section under the authority of the responsible officer, who will be required to certify periodically to the IRS on behalf of the FFI regarding the participating FFI's compliance with the requirements of the FFI agreement. If the IRS identifies concerns about the participating FFI's compliance, the IRS may request additional information to verify compliance with the requirements of the FFI agreement as described in paragraph (f)(4) of this section.

(6) *Event of default.* A participating FFI is required to cure an event of default with respect to the FFI agreement as defined in paragraph (g) of this section. Upon the occurrence of an event of default, the IRS will deliver to a participating FFI a notice of default and will allow the FFI an opportunity to cure the event of default as described in paragraph (g) of this section.

(7) *Refunds.* A participating FFI may file a collective refund on behalf of certain account holders and payees for amounts withheld by the participating FFI or its withholding agent under chapter 4 in excess of the account holder or payee's U.S. tax liability to the extent permitted in paragraph (h) of this section. A participating FFI may also make an adjustment for overwithholding using either the reimbursement procedure described in § 1.1474–2(a)(3) or the set-off procedure described in § 1.1474–2(a)(4).

(b) *Withholding requirements*—(1) *In general.* Except as otherwise provided in a Model 2 IGA, a participating FFI is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI after December 31, 2013, to the extent required under paragraph (b)(3) of this section. See paragraph (b)(2) of this section for rules for a participating FFI to identify the payee of a payment in order to determine whether withholding is required under this paragraph (b). See paragraph (b)(4) of this section for the extent of a participating FFI's requirement to deduct and withhold tax on a foreign passthru payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI. See paragraph (b)(5) of this section for the rules for withholding on payments to limited branches and limited FFIs. See paragraph (b)(6) for the special allowance to set aside in escrow amounts withheld with respect to dormant accounts. See paragraph (b)(7) of this section for the withholding requirements of certain U.S. branches of participating FFIs. See § 1.1471–2 for the exceptions to withholding and the exclusion from the definition of withholdable payment and foreign passthru payment that applies to any payment made under a grandfathered obligation or the gross proceeds from the disposition of such an obligation. See § 1.1474–1(d)(4)(iii) for the requirement of participating FFIs to report payments that are chapter 4 reportable amounts. See § 1.1474–6 for the coordination of withholding on payments under this paragraph (b) with the other withholding provisions under the Code.

(2) *Withholding determination.* Except as otherwise provided under § 1.1471–2 and paragraph (c) of this section with respect to certain preexisting accounts, a participating FFI is required to determine whether withholding applies at the time a payment is made by reliably associating the payment with valid documentation described in paragraph (c) of this section for the payee of the payment. For a payment made to an account, if the account is held by one or more individuals, the payee is each individual account holder. For a payment made to an account held by an entity, except as otherwise provided in § 1.1471–3(a)(3), the payee is the account holder of the payment. If the participating FFI makes a withholdable payment to a payee that is an entity and the payment is made with respect to an obligation that is not an account, except as otherwise provided in § 1.1471–3(a)(3), the payee is the person to whom the payment is made. See § 1.1473–1(a) to determine when a payment is made in the case of a withholdable payment. If a participating FFI cannot reliably associate a payment (or any portion of a payment) with valid documentation, the rules described in paragraph (c) of this section shall apply to determine the chapter 4 status of the account holder (and payee if other than the account holder). Notwithstanding the foregoing, a participating FFI may establish after the date of payment that withholding was not required to the extent permitted under § 1.1471–3(c)(7) or may apply the procedures provided in § 1.1474–2 when overwithholding occurs.

(3) *Satisfaction of withholding requirements.* A participating FFI that complies with the withholding obligations of this paragraph (b) with respect to accounts held by recalcitrant account holders and payees that are nonparticipating FFIs shall be deemed to satisfy its withholding obligations under sections 1471(a) and 1472 with respect to such account holders and payees. A participating FFI that is an NQI, NWP, NWT, or that is a QI that elects under section 1471(b)(3) not to assume withholding responsibility for the payment and that provides its withholding agent with the information necessary to allocate all or a portion of the payment to each payee as part of a withholding certificate described in § 1.1471–3(c)(3)(iii) will generally not be required to withhold under paragraph (b)(1) of this section. See § 1.1471–2(a)(2)(ii), however, for the circumstances under which a participating FFI that is an NQI, NWP, or NWT has a residual withholding responsibility. See also § 1.1471–3(c)(9)(iii)(B) for the circumstances under which a participating FFI that is

a broker has a residual withholding responsibility as an intermediary of the payment and may also be liable for any underwithholding that occurs. See §§ 1.1471–2(a) and 1.1472–1(a)(2)(i) and the QI, WP, or WT agreement for the withholding requirements of a participating FFI that is a QI, WP, or WT for purposes of chapter 4.

(4) *Foreign passthru payments.* A participating FFI is not required to deduct and withhold tax on a foreign passthru payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI before the later of January 1, 2017, or the date of publication in the **Federal Register** of final regulations defining the term foreign passthru payment.

(5) *Withholding on limited FFIs and limited branches*—(i) *Limited FFIs.* A participating FFI is required to withhold on a withholdable payment made to a limited FFI identifying itself as a nonparticipating FFI. A participating FFI that is a member of an expanded affiliated group that includes one or more limited FFIs will also be required to treat any such limited FFI as a nonparticipating FFI with respect to withholdable payments made to such limited FFI. A participating FFI will be considered to have made a withholdable payment to a limited FFI if such participating FFI receives a withholdable payment with respect to a security or instrument held on behalf of a limited FFI (or an account maintained by the limited FFI). A participating FFI will also be considered to have made a withholdable payment to a limited FFI when the limited FFI receives a payment with respect to a transaction between the limited FFI and such participating FFI that is in the same expanded affiliated group and such transaction hedges or otherwise provides total return exposure to another transaction between such participating FFI and a third party that gives rise to a withholdable payment.

(ii) *Limited branches.* A participating FFI is required to withhold on a withholdable payment made to a limited branch identifying itself as a nonparticipating FFI. A branch of the participating FFI other than the limited branch is also required to withhold on a withholdable payment when it receives the payment on behalf of a limited branch of the participating FFI. A branch of the participating FFI other than a limited branch will be considered to have received a withholdable payment on behalf of a limited branch when such other branch receives a withholdable payment with respect to a security or instrument it holds on behalf of a limited branch (or an account maintained by the limited branch). A branch of a participating FFI other than a limited branch will be considered to hold a security or instrument on behalf of a limited branch when it executes a transaction with a limited branch that hedges or otherwise provides total return exposure to another transaction between such other branch and a third party that gives rise to a withholdable payment.

(6) *Special rule for dormant accounts.* A participating FFI that makes a payment to a recalcitrant account holder of a dormant account and that withholds on such payment as required under paragraph (b)(1) of this section may, in lieu of depositing the tax withheld under § 1.6302–2 and described in § 1.1474–1(b), set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. In such case, the tax withheld becomes due 90 days following the date that the account ceases to be a dormant account if the account holder does not provide the documentation required under paragraph (c) of this section or becomes refundable to the account holder if the account holder provides the documentation required under paragraph (c) of this section establishing that withholding does not apply. If a dormant account escheats to a foreign government under the relevant laws in the jurisdiction in which the participating FFI (or branch thereof) operates, the participating FFI is not required to deposit with the IRS the amount held in escrow with respect to the account. See paragraph (d)(6)(ii) of this section for the definition of dormant account.

(7) *Withholding requirements for U.S. branches of participating FFIs that are treated as U.S. persons.* A U.S. branch of a participating FFI that is treated as a U.S. person and that satisfies its backup withholding obligations under section 3406(a) with respect to accounts held at the U.S. branch by account holders that are treated as U.S. non-exempt recipients under chapter 61 will be treated as satisfying its withholding obligation with respect to such accounts under section 1471(b)(1) and this paragraph (b). See paragraph (d)(2)(iii)(B) of this section for the special reporting requirements applicable to U.S. branches of participating FFIs that are treated as U.S. persons. See paragraphs (c)(2) and (d)(4) of this section for the reporting requirements of U.S. branches of participating FFIs with respect to payments that are chapter 4 reportable amounts.

(c) Due diligence for the identification and documentation of account holders and payees—(1) *Scope of paragraph.* Except to the extent that a participating FFI relies on the due diligence procedures set forth in an applicable Model 2 IGA, a participating FFI must follow this paragraph (c) to identify and document the chapter 4 status of each holder of an account maintained by the participating FFI to determine if the account is a U.S. account, non-U.S. account, or an account held by a recalcitrant account holder or nonparticipating FFI. Paragraph (c)(2) of this section provides the general rules for identification and documentation of account holders and payees, and paragraph (c)(2)(v) provides special documentation requirements for certain U.S. branches of participating FFIs. Paragraph (c)(3) of this section provides the rules for documenting entity accounts and payees. Paragraph (c)(4) of this section provides the general rules for documenting individual accounts other than preexisting accounts. Paragraph (c)(5) of this section provides the identification and documentation procedure for preexisting individual accounts. Paragraph (c)(6) of this section provides examples illustrating the application of the documentation exceptions for entity accounts and individual accounts. Paragraph (c)(7) of this section outlines the certification requirement relating to the due diligence procedures of this paragraph (c) with respect to preexisting accounts within the specified periods of time.

(2) *General rules for the identification and documentation of account holders and payees*—(i) *Overview.* Except as otherwise provided in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section (documentation exceptions for certain preexisting accounts), a participating FFI is required to identify among accounts maintained by the participating FFI each account that is a U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI, and to report information about such accounts in the manner provided in paragraph (d) of this section and § 1.1474–1(d)(4)(iii). See § 1.1471–5(a)(3) for rules to determine the holder of an account. The participating FFI is also required to retain a record of the documentation collected or otherwise maintained that meets the requirements described in this paragraph (c) when making certain payments to an account holder or payee (if other than an account holder) to determine whether withholding applies under paragraph (b) of this section or whether reporting applies under

§ 1.1474–1(d)(4)(iii)(C) and any payee for which it provides the certification described in § 1.1471–3(c)(9)(iii)(A) to another withholding agent.

(ii) *Standards of knowledge*—(A) *In general.* A participating FFI may rely on valid documentation that is collected pursuant to the due diligence procedures set forth in this paragraph (c) or that is otherwise maintained in the participating FFI's files, unless the participating FFI knows or has reason to know that such documentation is unreliable or incorrect. For purposes of a participating FFI documenting an account holder under this paragraph (c), the requirements for the validity of withholding certificates, written statements, and documentary evidence provided in § 1.1471–3(c) shall apply regardless of whether the participating FFI makes a payment to the account. Except as otherwise provided paragraph (c)(2)(ii)(B) of this section (certain mergers or bulk acquisitions) and in paragraph (c)(5)(iv) of this section (preexisting individual accounts), to determine whether a participating FFI knows or has reason to know that the documentation collected or otherwise maintained with respect to the account holder is unreliable or incorrect, the standards of knowledge provided in § 1.1471–3(e) shall apply regardless of whether the participating FFI makes a payment to the account. See § 1.1471–3(c)(8) and (9) for the requirement to obtain documentation on an account-by-account basis and the exceptions to this requirement.

(B) *Limits on reason to know with respect to certain accounts acquired in merger or bulk acquisition.* A participating FFI that acquires accounts of another financial institution either in a merger or bulk acquisition of accounts for value (other than a related party transaction described in § 1.1471–3(c)(9)(v)) may apply the limitations on reason to know provided in paragraphs (c)(2)(ii)(B)(*1*) or (*2*) of this section (as applicable and subject to the conditions therein), or the rules of § 1.1471–3(c)(9)(v) to rely upon documentation collected by another financial institution for an account acquired either in a merger or bulk acquisition of accounts for value.

(*1*) *In general.* The participating FFI may treat accounts acquired in a transaction described in this paragraph (c)(2)(ii)(B) as preexisting accounts for purposes of applying the identification and documentation procedures of this paragraph (c) by substituting the date of acquisition of such accounts for the effective date of the FFI agreement.

(*2*) *Participating FFIs and certain deemed-compliant FFIs that apply the due diligence rules, and U.S. financial institutions.* If a participating FFI (transferee FFI) acquires accounts of another participating FFI or deemed-compliant FFI (including a U.S. branch of either such FFI) that applies the due diligence requirements of this paragraph (c) as a condition of its status (as described in § 1.1471–5(f)), or of a U.S. financial institution (transferor FI), the transferee FFI may rely on the chapter 4 status determination made by the transferor FI for an account holder and will not be subject to the standards of knowledge set forth in paragraph (c)(2)(ii)(A) of this section until there is a change in circumstances with respect to the account if the following conditions are met—

(*i*) The transferee FFI does not have actual knowledge that the chapter 4 status determination provided by the transferor FI is unreliable or incorrect;

(*ii*) For the certification period following the acquisition of such accounts (described in paragraph (f)(3)(i) of this section), the transferee FFI acquiring the accounts tests a sample of the acquired accounts to determine if the chapter 4 status determinations made by the transferor FI are reliable;

(*iii*) In the case of a transferor FI that is a branch of a participating FFI or of a registered deemed-compliant FFI (other than a U.S. branch that is treated as a U.S. person) or that is a deemed-compliant FFI that applies the requisite due diligence rules of this paragraph (c) as a condition of its status, the transferor FI provides a written representation to the transferee FFI acquiring the accounts that the transferor FI has applied the due diligence procedures of this paragraph (c) with respect to the transferred accounts and, in the case of a transferor FI that is a participating FFI, has complied with the requirements of paragraph (f)(2) of this section; and

(*iv*) In the case of a transferor FI that is a U.S. financial institution or that is a U.S branch of a participating FFI or of a registered deemed-compliant FFI that is treated as a U.S. person, the transferee FFI may rely on the chapter 4 status determinations for a payee that is an entity only if prior to the date of transfer the U.S. financial institution or U.S. branch made a withholdable payment to the payee or, for a payee that is an individual, only if the U.S. financial institution or U.S. branch made a reportable payment (as defined under section 3406(b)) to the payee.

(iii) *Change in circumstances*—(A) *Obligation to identify a change in circumstances.* A participating FFI is required to institute procedures to ensure that any change in circumstances, as described in paragraph (c)(2)(iii)(B) of this section, is identified by the participating FFI, including procedures to ensure that a relationship manager identifies any change in circumstances with respect to an account. For example, if a relationship manager is notified that the account holder has a mailing address in the United States when there was no U.S. address previously associated with the account, the participating FFI will be required to treat the new address as a change in circumstances and will be required to retain a record of the appropriate documentation from the account holder as described in paragraph (c)(5)(iv)(B)(*2*)(iii) of this section.

(B) *Definition of change in circumstances.* For purposes of this section, a change in circumstances (as defined in § 1.1471–3(c)(6)(ii)(D)) includes any change or addition of information to the account holder's account (including the addition, substitution, or other change of an account holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in § 1.1471–5(b)(4)(iii) or by treating the accounts as consolidated obligations) if such change or addition of information affects the chapter 4 status of the account holder. For example, if a holder of an account (including a preexisting account) opens another account that is linked to such account in the participating FFI's computerized system as described under § 1.1471–5(b)(4)(iii) and as part of the participating FFI's account opening procedures the account holder provides a U.S. telephone number for such other account, this is a change in circumstances with respect to the first mentioned account. With respect to a preexisting account that meets a documentation exception described in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section, a change in circumstances also includes a change in account balance or value in a subsequent year that causes the account no longer to meet the documentation exception.

(C) *Requirements following a change in circumstances.* With respect to an individual account or an account held by a passive NFFE for which there is a change in circumstances with respect to the information regarding its owners, following a change in circumstances the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(3) or (c)(5)(iv)(B)(*2*) of this section within the time period provided by § 1.1471–5(g)(3)(iii) or, if unable to do so, must

treat such account as held by a recalcitrant account holder. With respect to an account held by an entity other than a passive NFFE described in the preceding sentence, following a change in circumstances, the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(3) of this section by the earlier of 90 days or the date a withholdable payment or foreign passthru payment is made to the account or, if unable to do so, must treat such account as held by a nonparticipating FFI.

(iv) *Record retention.* A participating FFI must retain a record of the documentation collected (or otherwise maintained) to establish the chapter 4 status of an account holder or payee pursuant to the requirements of this paragraph (c)(2)(iv). A participating FFI will be treated as having retained a record of a withholding certificate, written statement, or documentary evidence if the participating FFI retains either an original, certified copy, or photocopy (including a microfiche, scan, or similar means of record retention) of the withholding certificate, written statement, or documentary evidence collected to determine the chapter 4 status of the account holder for six calendar years following the year in which the due diligence procedures of this paragraph (c) were performed for the account. With respect to documentary evidence for an offshore obligation, however, a participating FFI that is not required to retain copies of documentation reviewed pursuant to its AML due diligence will be treated as having retained a record of such documentation if the participating FFI retains a record in its files noting the date the documentation was reviewed, each type of document, the document's identification number (if any) (for example, passport number), and whether any U.S. indicia were identified. The previous sentence applies with respect to an offshore obligation that is also a preexisting obligation, except, in such case, the requirement to record whether the documentation contained U.S. indicia does not apply. A participating FFI must also retain a record of any searches, including search results provided by third-party credit agencies as described in paragraph (c)(4)(ii) of this section, results from electronic searches, and requests made and responses to relationship manager inquiries for six calendar years following the year in which the due diligence procedures of this paragraph (c) were performed for the account. A participating FFI may be required to extend the six year retention period if the IRS requests such extension prior to the end of the six year retention period. Notwithstanding the preceding sentences, a participating FFI must retain a record of the chapter 4 status of an account holder or payee for as long as the FFI maintains the account or obligation. See § 1.1471–3(c)(6)(iii)(A) for the record retention period applicable to a participating FFI that is a withholding agent with respect to documentation collected (or otherwise maintained) for a payee.

(v) *Special rule for U.S. branches of participating FFIs that are treated as U.S. persons.* A U.S. branch of a participating FFI that is treated as a U.S. person shall apply, in lieu of the due diligence requirements of this paragraph (c), the due diligence requirements of § 1.1471–3 to determine the chapter 4 status of account holders and payees that are entities and shall apply the documentation requirements of chapter 3 or 61 (as applicable) with respect to individual account holders. See paragraph (b)(6) of this section for special withholding rules and paragraph (d)(2)(iii)(B) of this section for special reporting rules applicable to such U.S. branches.

(3) *Identification and documentation procedure for entity accounts and payees*—(i) *In general.* With respect to accounts held by entities, unless the documentation exception described in paragraph (c)(3)(iii) of this section applies, a participating FFI must determine if the account is a U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI by applying the principles of § 1.1471–3(b), (c), and (d) to establish the chapter 4 status of each account holder and each payee regardless of whether the participating FFI makes a payment to the account. If an account holder receiving a payment is not the payee of the payment under §§ 1.1471–3(a) and 1.1472–1(d)(3), the participating FFI is also required to establish the chapter 4 status of the payee or payees in order to determine whether withholding applies under paragraph (b) of this section.

(ii) *Timeframe for applying identification and documentation procedure for entity accounts and payees.* For preexisting entity accounts, a participating FFI must perform the requisite identification and documentation procedures within six months of the effective date of the FFI agreement for any account holder that is a prima facie FFI, as defined in § 1.1471–2(a)(4)(ii)(B), and within two years of the effective date of the FFI agreement for all other entity accounts, except as otherwise provided in paragraph (c)(3)(iii) of this section. For accounts that are not preexisting accounts, the participating FFI must perform the requisite identification and documentation procedures by the earlier of the date a withholdable payment or a foreign passthru payment is made with respect to the account or within 90 days of the date the participating FFI opens the account. Notwithstanding the foregoing sentences of this paragraph (c)(3)(ii), with respect to a preexisting obligation issued in nonregistered (bearer) form by an investment entity, the investment entity is required to perform the requisite identification and documentation procedures at the time a payment is collected by the beneficial owner of the payment (including a beneficial owner that collects the payment through an intermediary or agent). If the participating FFI cannot obtain all the documentation described in § 1.1471–3(d) or if the participating FFI knows or has reason to know that the documentation provided for an entity account is unreliable or incorrect (by applying the standards of knowledge applicable to entities in § 1.1471–3(e) as modified by paragraph (c)(2)(ii)), the participating FFI shall apply the presumption rules of § 1.1471–3(f) (as applicable to entities) to determine the chapter 4 status of the account holder. In the case of an account held by a passive NFFE that provides the documentation described in § 1.1471–3(d)(12) to establish its status as a passive NFFE but fails to provide the information regarding its owners, see § 1.1471–5(g)(2)(iv) for the requirement to treat the account as held by a recalcitrant account holder.

(iii) *Documentation exception for certain preexisting entity accounts*—(A) *Accounts to which this exception applies.* Unless the participating FFI elects otherwise pursuant to paragraph (c)(3)(iii)(C) of this section, a participating FFI is not required to perform the identification and documentation procedure contained in this paragraph (c)(3) with respect to a preexisting entity account the aggregate balance or value of which is $250,000 or less if no holder of such account that has previously been documented by the FFI as a U.S. person for purposes of chapter 3 or 61 is a specified U.S. person. For purposes of applying this exception, the account balance must be determined as of the effective date of the FFI agreement and the aggregation rules of paragraph (c)(3)(iii)(B) of this section shall apply. An account that meets this exception will cease to meet this exception as of the end of any

subsequent calendar year in which the account balance or value exceeds $1,000,000, applying the aggregation rules of paragraph (c)(3)(iii)(B) of this section, or as of the date on which there is another change in circumstances with respect to the account or any account aggregated with the account.

(B) *Aggregation of entity accounts.* For purposes of determining the aggregate balance or value of accounts held by an entity in applying the exception in this paragraph (c)(3)(iii), an FFI is required to aggregate the balance or value of all accounts held (in whole or in part) by the same account holder to the extent required under § 1.1471–5(b)(4)(iii)(A) and (B).

(C) *Election to forgo exception.* A participating FFI may elect to forgo the exception described in this paragraph (c)(3)(iii) by applying the identification and documentation procedures provided in this paragraph (c)(3) within the time period provided by paragraph (c)(3)(ii) of this section or otherwise applying the presumption rules of § 1.1471–3(f) to determine the chapter 4 status of the account holder.

(4) *Identification and documentation procedure for individual accounts other than preexisting accounts*—(i) *In general.* With respect to an individual account that is not a preexisting account or an account described under paragraph (c)(4)(iii)(B) of this section or § 1.1471–5(a)(4)(i) (providing an exception to U.S. account status for certain depository accounts with an aggregate balance or value of $50,000 or less), a participating FFI must determine if the account is a U.S. account or non-U.S. account by retaining a record of certain documentation to establish the chapter 4 status of each account holder. Specifically, a participating FFI must retain a record of documentary evidence that meets the requirements of § 1.1471–3(c)(5) (as applicable to individuals), the information described in paragraph (c)(4)(ii) or (c)(4)(iii)(A) of this section, or a withholding certificate to establish an account holder's status as a foreign person. Except as otherwise provided in paragraph (c)(4)(iii)(A) of this section, the participating FFI must also review all information collected in connection with the opening or maintenance of each account, including documentation collected as part of the participating FFI's account opening procedures and documentation collected for other regulatory purposes, and apply the standards of knowledge in paragraph (c)(2)(ii) of this section to determine if an account holder's claim of foreign status is unreliable or incorrect. If the participating FFI is not able to establish an account holder's status as a foreign person, the participating FFI must retain a record of either a Form W–9 or U.S. TIN (in any manner) and a valid and effective waiver described in section 1471(b)(1)(F)(i), if necessary, to establish an account holder's status as a U.S. person and to confirm that the account is a U.S. account. A participating FFI must complete the requisite identification and documentation procedures with respect to each account within the time period provided by § 1.1471–5(g)(3)(ii), or, if unable to do so, it must treat such account as held by a recalcitrant account holder. The presumption rules of § 1.1471–3(f) do not apply to individual account holders of a participating FFI.

(ii) *Reliance on third party for identification of individual accounts other than preexisting accounts.* A participating FFI may establish an account holder's status as a foreign person based on information provided by a third-party credit agency only if the following conditions are met—

(A) As part of the participating FFI's account opening procedures, the account holder provides a residence address outside the United States and attests in writing that the account holder is not a U.S. citizen or resident;

(B) The third-party credit agency verifies the account holder's claimed residence with at least one government data source from the jurisdiction in which the participating FFI (or branch thereof) operates or the account holder claims residence; and

(C) The participating FFI (or branch thereof) relies on the information provided by the third-party credit agency for purposes of satisfying AML due diligence with respect to the account in a FATF-compliant jurisdiction.

(iii) *Alternative identification and documentation procedure for certain cash value insurance or annuity contracts*—(A) *Group cash value insurance contracts or group annuity contracts.* A participating FFI may treat an account that is a group cash value insurance contract or group annuity contract and that meets the requirements of this paragraph (c)(4)(iii)(A) as a non-U.S. account until the date on which an amount is payable to an employee/certificate holder or beneficiary, if the participating FFI obtains a certification from an employer that no employee/certificate holder (account holder) is a U.S. person. A participating FFI is also not required to review all the account information collected by the FFI to determine if an account holder's claim of foreign status is unreliable or incorrect. An account that is a group cash value insurance contract or group annuity contract meets the requirements of this paragraph (c)(4)(iii)(A) if—

(*1*) The group life insurance contract or a group annuity contract issued to an employer and covers twenty-five or more employee/certificate holders;

(*2*) The employee/certificate holders are entitled to receive any contract value and to name beneficiaries for the benefit payable upon the employee's death; and

(*3*) The aggregate amount payable to any employee/certificate holder or beneficiary does not exceed $1,000,000.

(B) *Accounts held by beneficiaries of a cash value insurance contract that is a life insurance contract.* A participating FFI may presume that an individual beneficiary (other than the owner) of a cash value insurance contract that is a life insurance contract (account holder) receiving a death benefit is a foreign person and treat such account as a non-U.S. account unless the participating FFI has actual knowledge or reason to know that the beneficiary is a U.S. person. A participating FFI has reason to know that a beneficiary of a cash value insurance contract is a U.S. person if the information collected by the participating FFI and associated with the beneficiary contains U.S. indicia as described in paragraph (c)(5)(iv)(B)(*1*) of this section. If a participating FFI has actual knowledge or reason to know that the beneficiary is a U.S. person, the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(5)(iv)(B)(*2*) of this section.

(5) *Identification and documentation procedure for preexisting individual accounts*—(i) *In general.* With respect to a preexisting individual account, unless the account is an account described in § 1.1471–5(a)(4)(i) (providing exception to U.S. account status for certain depository accounts with an aggregate balance or value of $50,000 or less), a participating FFI may follow the identification and documentation procedures described below in paragraph (c)(5)(ii) through (iv) of this section (as applicable), in lieu of the identification and documentation procedures described in paragraph (c)(4) of this section, to determine if an account that is a preexisting account is a U.S. account, non-U.S. account, or account held by a recalcitrant account holder. A participating FFI must first determine whether there are any U.S. indicia associated with the account (as defined in paragraph (c)(5)(iv)(B)(*1*) of this section), and second, if there are U.S. indicia associated with the account, retain a record of the documentation described in paragraph (c)(5)(iv)(B)(*2*) of this section to

establish the account holder's chapter 4 status. For this purpose, the presumption rules of § 1.1471–3(f) do not apply. A participating FFI must complete the requisite identification and documentation procedures with respect to each account within the time period provided by § 1.1471–5(g)(3)(i) or (ii) (as applicable) or, if unable to do so, must treat such account as held by a recalcitrant account holder. A participating FFI may continue to treat an account with no U.S. indicia or an account that meets a documentation exception described in paragraph (c)(5)(iii) of this section or § 1.1471–5(a)(4)(i) (providing exception to U.S. account status for certain depository accounts with an aggregate balance or value of $50,000 or less) as a non-U.S. account, until there is a change in circumstances with respect to the account as described in paragraph (c)(2)(iii) of this section.

(ii) *Special rule for preexisting individual accounts previously documented as U.S. accounts for purposes of chapter 3 or 61.* If a participating FFI has documented an individual account holder as a U.S. person for purposes of chapter 3 or 61 and such account holder is a specified U.S. person, the account holder's account will be treated as a U.S. account for chapter 4 purposes and the identification and documentation procedures in paragraph (c)(5)(i) and (iv) of this section will not apply.

(iii) *Exceptions for certain low value preexisting individual accounts*—(A) *Accounts to which an exception applies.* Unless the participating FFI elects otherwise pursuant to paragraph (c)(5)(iii)(C) of this section, a participating FFI is not required to perform requisite identification and documentation procedures described in paragraph (c)(5)(i) and (iv) of this section with respect to either a preexisting individual account, other than a cash value insurance or annuity contract, the aggregate balance or value of which is $50,000 or less, or a preexisting individual account that is a cash value insurance or annuity contract described in § 1.1471–5(b)(1)(iv) the aggregate balance or value of which is $250,000 or less. For purposes of applying these exceptions, the account balance must be determined as of the effective date of the FFI agreement and the aggregation rules of paragraph (c)(5)(iii)(B) of this section shall apply. An account that meets either of these exceptions will cease to meet these exceptions as of the end of any subsequent calendar year in which the account balance or value exceeds $1,000,000, applying the aggregation rules of paragraph (c)(3)(iii)(B) of this section, or until there is another change in circumstances with respect to the account or any account aggregated with the account.

(B) *Aggregation of accounts.* For purposes of determining the aggregate balance or value of a preexisting individual account, other than an account that is cash value insurance or annuity contract, an FFI is required to aggregate the balance or value of all accounts that are not cash value insurance or annuity contracts to the extent required under § 1.1471–5(b)(4)(iii)(A) or (B). For purposes of determining the aggregate balance or value of preexisting individual account that is a cash value insurance or annuity contract, an FFI will be required to aggregate the balance or value of all accounts that are cash value insurance or annuity contracts to the extent required under § 1.1471–5(b)(4)(iii)(A) or (B).

(C) *Election to forgo exception.* A participating FFI may elect to forgo the exceptions described in paragraph (c)(5)(iii) of this section by applying the identification and documentation procedures provided in this paragraph (c) within the time provided by paragraph (c)(5)(i) of this section or otherwise treating the account as held by a recalcitrant account holder pursuant to § 1.1471–5(g).

(iv) *Specific identification and documentation procedures for preexisting individual accounts*—(A) *In general.* A participating FFI applying the identification and documentation procedures of this paragraph (c)(5)(iv) must review its preexisting individual accounts (applying the electronic search described in paragraph (c)(5)(iv)(C) of this section and, if appropriate, the enhanced review for high-value accounts described in paragraph (c)(5)(iv)(D) of this section) to determine if there are any U.S. indicia (as described in paragraph (c)(5)(iv)(B)(*1*) of this section) associated with the account. If no U.S. indicia are identified with respect to an account, the participating FFI may treat the account as a non-U.S. account. If U.S. indicia are identified with respect to an account, the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(5)(iv)(B)(*2*) of this section to establish the account holder's status as a foreign person. A participating FFI that follows the procedures described in this paragraph (c)(5)(iv) (as applicable) with respect to its preexisting individual accounts will not be treated as having reason to know that the determination made with respect to the account was unreliable or incorrect because of information contained in any account files that the participating FFI did not review and was not required to review under the applicable identification procedure. Thus, for example, if a participating FFI was only required to perform an electronic search with respect to a preexisting individual account and no U.S. indicia were identified in the results of the electronic search, the participating FFI would not have reason to know that the individual account holder was a U.S. person, even if the participating FFI had on file (but was not required to and did not review) a copy of the individual's passport that indicates that the individual was born in the United States.

(B) *U.S. indicia and relevant documentation rules*—(*1*) *U.S. indicia.* A participating FFI must review an account holder's account information to the extent required under paragraphs (c)(5)(iv)(C) and (D) of this section for any of the following U.S. indicia:

(*i*) Designation of the account holder as a U.S. citizen or resident;

(*ii*) A U.S. place of birth;

(*iii*) A current U.S. residence address or U.S. mailing address (including a U.S. post office box);

(*iv*) A current U.S. telephone number (regardless of whether such number is the only telephone number associated with the account holder);

(*v*) Standing instructions to pay amounts from the account to an account maintained in the United States;

(*vi*) A current power of attorney or signatory authority granted to a person with a U.S. address; or

(*vii*) An ''in-care-of'' address or a ''hold mail'' address that is the sole address the FFI has identified for the account holder.

(*2*) *Documentation to be retained upon identifying U.S. indicia.* If U.S. indicia are identified with respect to an account holder's account information, a participating FFI must retain a record of the documentation described in paragraphs (c)(5)(iv)(B)(*2*)(*i*) through (*vii*) of this section, applicable to the U.S. indicia identified, to establish the account holder's status as a foreign person. If the participating FFI cannot establish an account holder's status as a foreign person based on such documentation, the participating FFI must retain a record of a Form W–9 and a valid and effective waiver as described in section 1471(b)(1)(F)(ii), if necessary, to confirm that the account is a U.S. account or, if unable to do so, must treat the account as held by a recalcitrant account holder.

(*i*) *Designation of account holder as a U.S. citizen or resident.* If the

information required to be reviewed with respect to the account contains a designation of an account holder as a U.S. citizen or resident, the participating FFI must retain a record of a withholding certificate and documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States in order to establish the account holder's status as a foreign person.

(*ii*) *Unambiguous indication of a U.S. place of birth.* If information required to be reviewed with respect to the account unambiguously indicates a U.S. place of birth for an account holder, the participating FFI must retain a record of a form of documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and a copy of the individual's Certificate of Loss of Nationality of the United States, or, alternatively, a withholding certificate, a form of documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States, and a reasonable written explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth in order to establish the account holder's status as a foreign person.

(*iii*) *U.S. address or U.S. mailing address.* If information required to be reviewed with respect to the account contains a U.S. address or a U.S. mailing address for an account holder, the participating FFI must retain a record of a withholding certificate and a form of documentary evidence described in § 1.1471–3(c)(5)(i)(A) through (C) in order to establish the account holder's status as a foreign person.

(*iv*) *Only U.S. telephone numbers.* If information required to be reviewed with respect to the account contains one or more telephone numbers in the United States and no other telephone numbers for an account holder, the participating FFI must retain a record of a withholding certificate and a form of documentary evidence described in § 1.1471–3(c)(5)(i)(A) through (C) in order to establish the account holder's status as a foreign person.

(*v*) *U.S. telephone numbers and non-U.S. telephone numbers.* If information required to be reviewed with respect to the account contains one or more telephone numbers in the United States and at least one telephone number outside the United States for an account holder, the participating FFI must retain a record of a withholding certificate or a form of documentary evidence described in § 1.1471–3(c)(5)(i)(A) through (C) in order to establish the account holder's status as a foreign person.

(*vi*) *Standing instructions to pay amounts.* If information required to be reviewed with respect to the account contains standing instructions to pay amounts from the account to an account maintained in the United States for an account holder, the participating FFI must retain a record of a withholding certificate and a form of documentary evidence described in § 1.1471–3(c)(5)(i)(A) through (C) in order to establish the account holder's status as a foreign person.

(*vii*) *Power of attorney or signatory authority granted to a person with a U.S. address or ''in-care-of'' address or ''hold mail'' address.* If information required to be reviewed with respect to the account includes a power of attorney or signatory authority granted to a person with a U.S. address or contains an ''in-care-of'' address or ''hold mail'' address that is the sole address identified for the account holder, the participating FFI must retain a record of either a withholding certificate or a form of documentary evidence described in § 1.1471–3(c)(5)(i)(A) through (C) in order to establish the account holder's status as a foreign person.

(C) *Electronic search for identifying U.S. indicia.* Except as provided in paragraph (c)(5)(iv)(D) of this section relating to the enhanced review for high-value accounts, a participating FFI may rely solely on a review of the electronically searchable information associated with an account and maintained by the participating FFI to determine if there are any of the U.S. indicia described in paragraph (c)(5)(iv)(B)(*1*) of this section associated with the account. For purposes of this paragraph (c)(5)(iv)(C), however, an FFI will not be required to treat as U.S. indicia an in-care-of address or a hold mail address that is the sole address identified for the account holder.

(D) *Enhanced review for identifying U.S. indicia in the case of certain high-value accounts*—(*1*) *In general.* With respect to preexisting individual accounts that have a balance or value that exceeds $1,000,000 as of the effective date of the FFI agreement, or at the end of any subsequent calendar year (''high-value accounts''), a participating FFI must apply the enhanced review described in this paragraph (c)(5)(iv)(D) in addition to the electronic search described in paragraph (c)(5)(iv)(C) of this section to identify any U.S. indicia described in paragraph (c)(5)(iv)(B)(*1*) of this section associated with the account. For purposes of determining the balance or value of an account, a participating FFI must apply the aggregation rules § 1.1471–5(b)(4)(iii)(A) and (B). If a participating FFI applied the enhanced review described in this paragraph (c)(5)(iv)(D) to an account in a previous year, the participating FFI will not be required to reapply such procedures to such account in a subsequent year.

(*2*) *Relationship manager inquiry.* With respect to all high-value accounts, a participating FFI must identify accounts to which a relationship manager is assigned (including any accounts aggregated with such account) and for which the relationship manager has actual knowledge that the account holder is a U.S. citizen or resident.

(*3*) *Additional review of non-electronic records.* Except as provided in paragraph (c)(5)(iv)(E) of this section, and except with respect to any account for which the participating FFI has retained a record of a withholding certificate and documentary evidence described in § 1.1471–3(c)(5) establishing the account holder's foreign status, a participating FFI must review to identify any U.S. indicia the current customer master file of a high-value account and, if not contained in the current customer master file, the following documents described in paragraphs (c)(5)(iv)(D)(*3*)(*i*) through (*v*) of this section that are associated with such an account and were obtained by the participating FFI within the five calendar years preceding the later of the effective date of the FFI agreement, or the end of the calendar year in which the account exceeded the $1,000,000 threshold described in paragraph (c)(5)(iv)(D)(*1*) of this section. The documents to be reviewed by the participating FFI if not contained in the current customer master file are—

(*i*) The most recent withholding certificate, written statement, and documentary evidence;

(*ii*) The most recent account opening contract or documentation;

(*iii*) The most recent documentation obtained by the participating FFI for purposes of AML due diligence or for other regulatory purposes;

(*iv*) Any power of attorney or signature authority forms currently in effect; and

(*v*) Any standing instructions to pay amounts to another account.

(*4*) *Limitations on the enhanced review in the case of comprehensive electronically searchable information.* A participating FFI is not required to apply the enhanced review of this paragraph (c)(5)(iv)(D) and may instead rely on the electronic search described in paragraph (c)(5)(iv)(C) of this section to identify U.S. indicia to the extent the

following information is available in the FFI's electronically searchable information—

(*i*) The account holder's nationality and/or residence status;

(*ii*) The account holder's current residence address and mailing address;

(*iii*) The account holder's current telephone number(s);

(*iv*) Whether there are standing instructions to pay amounts to another account;

(*v*) Whether there is a current ''in-care-of'' address or ''hold mail'' address for the account holder if no other residence or mailing address is found for the account; and

(*vi*) Whether there is any power of attorney or signatory authority for the account.

(E) *Exception for preexisting individual accounts that a participating FFI has documented as held by foreign individuals for purposes of meeting its obligations under chapter 61 or its QI, WP, or WT agreement.* A participating FFI that has previously obtained documentation from an account holder to establish the account holder's status as a foreign individual in order to meet its obligations under its QI, WP, or WT agreement with the IRS, or to fulfill its reporting obligations as a U.S. payor under chapter 61, is not required to perform the electronic search described in paragraph (c)(5)(iv)(C) of this section or the enhanced review described in paragraph (c)(5)(iv)(D)(*3*) of this section for such account. The participating FFI is required, however, to perform the relationship manager inquiry described in paragraph (c)(5)(iv)(D)(*2*) of this section if the account is a high-value account described in paragraph (c)(5)(iv)(D)(*1*) of this section. For purposes of this paragraph (c)(5)(iv)(E), a participating FFI has documented an account holder's foreign status under chapter 61 if the participating FFI has retained a record of the documentation required under chapter 61 to establish the foreign status of an individual and the account received a reportable payment as defined under section 3406(b) in any prior year. In the case of a participating FFI that is a QI, WP, or WT, the participating FFI has documented an account holder's foreign status under its QI, WP, or WT agreement (as applicable) if the participating FFI has met the relevant documentation requirements of its agreement with respect to an account holder that received a reportable amount in any year in which its agreement was in effect.

(6) Examples. The following examples illustrate the documentation exceptions provided in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section:

Example 1. Aggregation rules applicable to preexisting individual accounts. U, a U.S. resident individual, holds 100 shares of common stock of FFI1, an investment entity. On the effective date of FFI1's FFI agreement, the common stock held by U is worth $45,000. U also holds shares of preferred stock of FFI1. On the effective date of FFI1's FFI agreement, U's preferred stock in FFI1 is worth $35,000. Neither FFI1's common stock nor FFI1's preferred stock is regularly traded on an established securities market. U also holds debt instruments issued by FFI1 that are not regularly traded on an established securities market. On the effective date of FFI1's FFI agreement, U's FFI1 debt instruments are worth $15,000. U's common and preferred equity interests are associated with U and with one another by reference to U's foreign tax identification number in FFI1's computerized information management system. However, U's debt instruments are not associated with U's equity interests in FFI1's computerized information management system. None of these accounts are managed by a relationship manager. Previously, FFI1 was not required to and did not obtain a Form W–9 from U for purposes of chapter 3 or 61. U's FFI1 debt interests are eligible for the paragraph (c)(5)(iii)(A) documentation exception because that account does not exceed the $50,000 threshold described in paragraph (c)(5)(iii)(A)(*1*) of this section, taking into account the aggregation rule described in paragraph (c)(5)(iii)(A)(*2*) of this section. However, U's common and preferred equity interests are not eligible for the paragraph (c)(5)(iii)(A) documentation exception because the accounts exceed the $50,000 threshold described in paragraph (c)(5)(iii)(A)(*1*) of this section, taking into account the aggregation rules described in § 1.1471–5(b)(4)(iii) pursuant to the requirements of paragraph (c)(5)(iii)(A)(*2*) of this section.

Example 2. Aggregation rules for owners of entity accounts. In Year 1, U, a U.S. resident individual, maintains a depository account that is a preexisting account in CB, a commercial bank. The balance in U's depository account on the first date CB's FFI agreement is in effect is $20,000. U also owns 100% of Entity X, which maintains a depository account that is a preexisting account in CB, and 50% of Entity Y, which maintains a depository account that is a preexisting account in CB. The balance in Entity X's account on the first date CB's FFI agreement is in effect is $130,000 and the balance in Entity Y's account on effective date of CB's FFI agreement is $110,000. All three accounts are associated with one another in CB's computerized information management system by reference to U's foreign tax identification number. None of the accounts are managed by a relationship manager. Previously, CB was not required to and did not obtain a Form W–9 from U for purposes of chapter 3 or 61. U's depository account qualifies for the § 1.1471–5(a)(4)(i) exception to U.S. account status because it does not exceed the $50,000 threshold, taking into account the aggregation rule described in § 1.1471–5(a)(4)(i)(B)(*2*). Entity X's account and Entity Y's account both qualify for the paragraph (c)(3)(iii) documentation exception because the accounts do not exceed the $250,000 threshold described in paragraph (c)(3)(iii)(B)(*1*) of this section taking into account the aggregation rules described in § 1.1471–5(b)(*4*)(*iii*) pursuant to the requirements of paragraph (c)(3)(iii)(B)(*2*) of this section.

(7) *Certifications of responsible officer.* In order for a participating FFI to comply with the requirements of an FFI agreement with respect to its identification procedures for preexisting accounts, a responsible officer of the participating FFI must certify to the IRS regarding the participating FFIs compliance with the diligence requirements of this paragraph (c). Such certification must be made no later than 60 days following the date that is two years after the effective date of the FFI agreement. The responsible officer must certify that the participating FFI has completed the review of all high-value accounts as required under paragraphs (c)(5)(iv)(D) and (E) of this section and treats any account holder of an account for which the participating FFI has not retained a record of any required documentation as a recalcitrant account holder as required under this section and § 1.1471–5(g).The responsible officer must also certify that the participating FFI has completed the account identification procedures and documentation requirements of this paragraph (c) for all other preexisting accounts or, if it has not retained a record of the documentation required under this paragraph (c) with respect to an account, treats such account in accordance with the requirements of this section and § 1.1471–5(g). The responsible officer must also certify to the best of the responsible officer's knowledge after conducting a reasonable inquiry, that the participating FFI did not have any formal or informal practices or procedures in place from August 6, 2011, through the date of such certification to assist account holders in the avoidance of chapter 4. A reasonable inquiry for purposes of this paragraph (c)(7) is a review of the participating FFI's procedures and a written inquiry, such as email requests to relevant lines of business, that requires responses from relevant customer on-boarding and management personnel as to whether they engaged in any such practices during that period. Practices or procedures that assist account holders in the avoidance of chapter 4 include, for example, suggesting that account holders split up accounts to avoid classification as a high-value account;

suggesting that account holders of U.S. accounts close, transfer, or withdraw from their account to avoid reporting; intentional failures to disclose a known U.S. account; suggesting that an account holder remove U.S. indicia from its account information; or facilitating the manipulation of account balances or values to avoid thresholds. If the responsible officer is unable to make any of the certifications described in this paragraph (c)(7), the responsible officer must make a qualified certification to the IRS stating that such certification cannot be made and that corrective actions will be taken by the responsible officer.

(d) *Account reporting*—(1) *Scope of paragraph.* This paragraph (d) provides rules addressing the information reporting requirements applicable to participating FFIs with respect to U.S. accounts, accounts held by owner-documented FFIs, and recalcitrant account holders. Paragraph (d)(2) of this section describes the accounts subject to reporting under this paragraph (d), and specifies the participating FFI that is responsible for reporting an account or account holder. Paragraph (d)(3) of this section describes the information required to be reported and the manner of reporting by a participating FFI under section 1471(c)(1) with respect to a U.S. account or an account held by an owner-documented FFI. Paragraph (d)(4) of this section provides definitions of terms applicable to paragraph (d)(3). Paragraph (d)(5) of this section describes the conditions for a participating FFI to elect to report its U.S. accounts and accounts held by owner-documented FFIs under section 1471(c)(2) and the information required to be reported under such election. Paragraph (d)(6) of this section provides rules for a participating FFI to report its recalcitrant account holders. Paragraph (d)(7) of this section provides special transitional reporting rules applicable to reports due in 2015 and 2016. Paragraph (d)(8) of this section provides the reporting requirements of a participating FFI that is a QI, WP or WT with respect to U.S. accounts. See § 301.1474–1(a) of this chapter for the requirement for a financial institution to file the information required under this paragraph (d) on magnetic media.

(2) *Reporting requirements in general*—(i) *Accounts subject to reporting.* Subject to the rules of paragraph (d)(7) of this section, a participating FFI shall report by the time and in the manner prescribed in paragraph (d)(3)(vii) of this section, the information described in paragraph (d)(3) of this section with respect to accounts maintained at any time during each calendar year for which the participating FFI is responsible for reporting under paragraph (d)(2)(ii) of this section and that it is required to treat as U.S. accounts or accounts held by owner-documented FFIs, including accounts that are identified as U.S. accounts by the end of such calendar year pursuant to a change in circumstances during such year as described in paragraph (c)(2)(iii) of this section. Alternatively, a participating FFI may elect to report under paragraph (d)(5) of this section with respect to such accounts for each calendar year. With respect to accounts held by recalcitrant account holders, a participating FFI is required to report with respect to each calendar year under paragraph (d)(6) of this section and not under paragraph (d)(3) or (5) of this section. For separate reporting requirements of participating FFIs with respect to payments and for transitional rules for participating FFIs to report certain foreign reportable amounts made to nonparticipating FFIs, see § 1.1474–1(d)(4)(iii).

(ii) *Financial institution required to report an account*—(A) *In general.* Except as otherwise provided in paragraphs (d)(2)(ii)(B) through (E) of this section, the participating FFI that maintains the account is responsible for reporting the account in accordance with the requirements of paragraph (d)(2)(iii), (3), or (5) of this section (as applicable) for each calendar year. Except as otherwise provided in paragraph (d)(2)(ii)(C) of this section, a participating FFI is responsible for reporting accounts held by recalcitrant account holders that it maintains in accordance with the requirements of paragraph (d)(6) of this section. A participating FFI is not required to report the information required under paragraph (d)(6) of this section with respect to an account held by a recalcitrant account holder of another participating FFI even if that other participating FFI holds the account as an intermediary on behalf of such account holder and regardless of whether the participating FFI is required to report payments made to the recalcitrant account holder of such other FFI under § 1.1474–1(d)(4)(iii).

(B) *Special reporting of account holders of territory financial institutions.* In the case of an account held by a territory financial institution acting as an intermediary with respect to a withholdable payment—

(*1*) If the territory financial institution agrees to be treated as a U.S. person with respect to the payment under § 1.1471–3(c)(3)(iii)(F), a participating FFI is not required to report under paragraph (d)(2)(i) of this section with respect to the account holders of the territory financial institution; or

(*2*) If the territory financial institution does not agree to be treated as a U.S. person with respect to a withholdable payment, the participating FFI must report with respect to each specified U.S. person or substantial U.S. owner of a foreign entity that is an NFFE with respect to which the territory financial institution acts as an intermediary and provides the participating FFI with the information and documentation required under § 1.1471–3(c)(3)(iii)(G).

(C) *Special reporting of account holders of a sponsored FFI.* A sponsoring entity that has agreed to fulfill the reporting responsibilities of this paragraph (d) on behalf of a sponsored FFI shall report in accordance with the requirements of paragraph (d)(2)(iii), (3), or (5) of this section (as applicable) with respect to each U.S. account and paragraph (d)(6) of this section with respect to each account held by a recalcitrant account holder of the sponsored FFI to the extent and in the manner required if such sponsored FFI were a participating FFI. The sponsoring entity shall identify each sponsored FFI for which it is reporting to the extent required on the forms for reporting U.S. accounts and recalcitrant account holders and the accompanying instructions to the forms.

(D) *Special reporting of accounts held by owner-documented FFIs.* A participating FFI that maintains an account held by an FFI that it has agreed to treat as an owner-documented FFI under § 1.1471–3(d)(6) shall report the information described in paragraph (d)(3)(iv) or (d)(5)(iii) of this section with respect to each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*). See § 1.1474–1(i) for the reporting obligations of a participating FFI with respect to a payee of an obligation other than an account that it has agreed to treat as an owner-documented FFI.

(E) *Branch reporting of accounts.* A participating FFI may elect to comply with its obligation to report under paragraph (d)(3) or (d)(5) of this section by reporting its accounts on a branch-by-branch basis with respect to one or more of its branches. A participating FFI that makes this election shall use the information reporting number assigned to the branch to identify the branch that is reporting its accounts separately. A branch that reports under this election shall file with the IRS the information required to be reported on accounts that it maintains in accordance with the forms and their accompanying instructions provided by the IRS for

purposes of this election. For the definition of a branch that applies for purposes of this paragraph (d), see paragraph (e)(2)(ii) of this section.

(iii) *Special U.S. account reporting rules for U.S. payors*—(A) *Special reporting rule for U.S. payors other than U.S. branches.* Participating FFIs that are U.S. payors (other than U.S. branches) that report the information required under chapter 61 with respect to account holders of accounts that the participating FFI is required to treat as U.S. accounts or accounts held by owner-documented FFIs and that report the information described in paragraph (d)(5)(ii) of this section with respect to each such account shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section with respect to accounts that the participating FFI is required to treat as U.S. accounts or accounts held by owner-documented FFIs.

(B) *Special reporting rules for U.S. branches treated as U.S. persons.* A U.S. branch of a participating FFI that is treated as a U.S. person shall be treated as having satisfied the reporting requirements described in paragraphs (d)(2)(i) and (d)(2)(ii)(C) of this section if it reports under—

(*1*) Chapter 61 with respect to account holders that are U.S. non-exempt recipients;

(*2*) Chapter 61 with respect to persons subject to withholding under section 3406;

(*3*) Section 1.1474–1(i) with respect to substantial U.S. owners of NFFEs that are not excepted NFFEs as defined in § 1.1472–1(c) and;

(*4*) Section 1.1474–1(i) with respect to specified U.S. persons identified in § 1.1471–3(d)(6)(iv)(A)(*1*) of owner-documented FFIs.

(3) *Reporting of accounts under section 1471(c)(1)*—(i) *In general.* The participating FFI (or branch thereof) that is responsible for reporting an account that it is required to treat as a U.S. account or accounts held by owner-documented FFIs under paragraph (d)(2)(ii) of this section shall be required to report such account under this paragraph (d)(3) for each calendar year unless it elects to report its U.S. accounts or accounts held by owner-documented FFIs under paragraph (d)(5) of this section.

(ii) *Accounts held by specified U.S. persons.* In the case of an account described in paragraph (d)(3)(i) of this section that is held by one or more specified U.S. persons, a participating FFI is required to report the following information under this paragraph (d)(3)—

(A) The name, address, and TIN of each account holder that is a specified U.S. person;

(B) The account number;

(C) The account balance or value of the account;

(D) The payments made with respect to the account, as described in paragraph (d)(4)(iv) of this section, during the calendar year; and

(E) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(vi) of this section and its accompanying instructions.

(iii) *Accounts held by U.S. owned foreign entities.* With respect to each U.S. account described in paragraph (d)(3)(i) of this section that is held by an NFFE that is a U.S. owned foreign entity, a participating FFI is required to report under this paragraph (d)(3)(iii)—

(A) The name of the U.S. owned foreign entity that is the account holder;

(B) The name, address, and TIN of each substantial U.S. owner of such entity;

(C) The account number;

(D) The account balance or value of the account held by the NFFE;

(E) The payments made with respect to the account, as described in paragraph (d)(4)(iv) of this section, during the calendar year; and

(F) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(vi) of this section and its accompanying instructions.

(iv) *Special reporting of accounts held by owner-documented FFIs.* With respect to each account held by an owner-documented FFI, a participating FFI is required to report under this paragraph (d)(3)(iv)—

(A) The name of the owner-documented FFI;

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*);

(C) The account number of the account held by the owner-documented FFI;

(D) The account balance or value of the account held by the U.S. owned foreign entity;

(E) The payments made with respect to the account held by the owner-documented FFI, as described in paragraph (d)(4)(iv) of this section, during the calendar year; and

(F) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(vi) of this section and its accompanying instructions.

(v) *Branch reporting.* Except in the case of a branch that reports separately under paragraph (d)(2)(ii)(E) of this section, a participating FFI that reports the information described in paragraphs (d)(3)(ii) through (iv) of this section shall also report the jurisdiction of the branch that maintains the account being reported in accordance with instructions to the form provided for purposes of such reporting.

(vi) *Form for reporting accounts under section 1471(c)(1).* The information described in paragraphs (d)(3)(ii) through (iv) of this section shall be reported on Form 8966, ''FATCA Report,'' (or such other form as the IRS may prescribe) with respect to each account subject to reporting under paragraph (d)(3)(i) of this section maintained at any time during the calendar year. This form shall be filed in accordance with its requirements and its accompanying instructions.

(vii) *Time and manner of filing.* Except as provided in paragraph (d)(7)(iv)(B) of this section, Form 8966 shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates. See the accompanying instructions to this form for electronic filing instructions.

(viii) *Extensions in filing.* The IRS shall grant an automatic 90-day extension of time in which to file Form 8966. Form 8809, ''Request for Extension of Time to File Information Returns,'' (or such other form as the IRS may prescribe) must be used to request such extension of time and must be filed no later than the due date of Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require.

(4) *Descriptions applicable to reporting requirements of § 1.1471–4(d)(3)*—(i) *Address.* The address to be reported with respect to an account held by a specified U.S. person is the residence address recorded by the participating FFI for the account holder or, if no residence address is associated with the account holder, the address for the account used for mailing or for other purposes by the participating FFI. In the case of an account held by a U.S. owned foreign entity, the address to be reported is the address of each substantial U.S. owner of such entity. In the case of an account held by an owner-documented FFI, the address to be reported is the address of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*).

(ii) *Account number.* The account number to be reported with respect to an account is the identifying number assigned by the participating FFI for purposes other than to satisfy the reporting requirements of this paragraph (d), or, if no such number is assigned to the account, a unique serial number or other number such participating FFI assigns to the financial account for purposes of reporting under paragraph (d)(3) of this section that distinguishes the account from other accounts maintained by such institution.

(iii) *Account balance or value*—(A) *In general.* The participating FFI shall report the average balance or value of the account if the FFI reports average balance or value to the account holder for a calendar year. If the participating FFI does not report the average balance or value of the account to the account holder, the participating FFI shall report the balance or value of the account as of the end of the calendar year as determined in accordance with § 1.1471–5(b)(4). In the case of an account that is a cash value insurance or annuity contract, a participating FFI shall report the balance or value of the account as determined in accordance with § 1.1471–5(b)(4).

(B) *Currency translation of account balance or value.* The account balance or value of an account may be reported in U.S. dollars or in the currency in which the account is denominated. In the case of an account denominated in one or more foreign currencies, the participating FFI may elect to report the account balance or value in a currency in which the account is denominated and is required to identify the currency in which the account is reported. If the participating FFI elects to report such an account in U.S. dollars, the participating FFI must calculate the account balance or value of the account in the manner described in § 1.1471–5(b)(4).

(iv) *Payments made with respect to an account*—(A) *Depository accounts.* The payments made during a calendar year with respect to a depository account consist of the aggregate gross amount of interest paid or credited to the account during the year.

(B) *Custodial accounts.* The payments made during a calendar year with respect to a custodial account consist of—

(*1*) The aggregate gross amount of dividends paid or credited to the account during the calendar year;

(*2*) The aggregate gross amount of interest paid or credited to the account during the calendar year;

(*3*) The gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year with respect to which the FFI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder; and

(*4*) The aggregate gross amount of all other income paid or credited to the account during the calendar year.

(C) *Other accounts.* In the case of an account described in § 1.1471–5(b)(1)(iii) (relating to debt or equity interests) or (iv) (relating to cash value insurance contracts and annuity contracts), the payments made during the calendar year with respect to such account are the gross amounts paid or credited to the account holder during the calendar year including payments in redemption (in whole or part) of the account.

(D) *Transfers and closings of deposit, custodial, insurance, and annuity financial accounts.* In the case of an account closed or transferred in its entirety by an account holder during a calendar year that is a depository account, custodial account, or a cash value insurance contract or annuity contract, the payments made with respect to the account shall be—

(*1*) The payments and income paid or credited to the account that are described in paragraph (d)(4)(iv)(A) or (B) of this section for the calendar year until the date of transfer or closure; and

(*2*) The amount or value withdrawn or transferred from the account in connection with the closure or transfer of the account.

(E) *Amount and character of payments subject to reporting.* For purposes of reporting under paragraph (d)(3) of this section, the amount and character of payments made with respect to an account may be determined under the same principles that the participating FFI uses to report information on its resident account holders to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located. Thus, the amount and character of items of income described in paragraphs (d)(4)(iv)(A), (B), and (C) need not be determined in accordance with U.S. federal income tax principles. If any of the types of payments described in paragraph (d)(4)(iv) of this section are not reported to the tax administration of the jurisdiction in which the participating FFI (or branch thereof) is located, such amounts may be determined in the same manner as is used by the participating FFI for purposes of reporting to the account holder. If any of the types of payments described in this paragraph (d)(4)(iv) is neither reported to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located nor reported to the account holder for the year for which reporting is required under paragraph (d) of this section, such item must be determined and reported either in accordance with U.S. federal tax principles or in accordance with any reasonable method of reporting that is consistent with the accounting principles generally applied by the participating FFI. Once a participating FFI (or branch thereof) has applied a method to determine such amounts, it must apply such method consistently for all account holders and for all subsequent years unless the Commissioner consents to a change in such method. Consent will be automatically granted for a change to rely on U.S. federal income tax principles to determine such amounts.

(F) *Currency translation.* A payment described in this paragraph (d)(4)(iv) may be reported in the currency in which the payment is denominated or in U.S. dollars. In the case of payments denominated in one or more foreign currencies, a participating FFI may elect to report the payments in a currency in which payments are denominated and is required to identify the currency in which the account is reported. If such a payment is reported in U.S. dollars, the participating FFI must calculate the amount in the manner described in § 1.1471–5(b)(4).

(v) *Record retention requirements.* A participating FFI that produces, in the ordinary course of its business, account statements that summarize the activity (including withdrawals, transfers, and closures) of an account for any calendar year in which the account was required to be reported under paragraph (d)(3) of this section must retain a record of such account statements. The record must be retained for the longer of six years or the retention period under the FFI's normal business procedures. A participating FFI may be required to extend the six year retention period if the IRS requests such an extension prior to the expiration of the six year period.

(5) *Election to perform chapter 61 reporting*—(i) *In general*—(A) *Election under section 1471(c)(2).* Except as otherwise provided in this paragraph (d)(5), a participating FFI may elect under section 1471(c)(2) and this paragraph (d)(5) to report under sections 6041, 6042, 6045, and 6049, as appropriate, with respect to any account required to be reported under this paragraph (d). Such reporting must be done as if such participating FFI were a U.S. payor and each holder of an account that is a specified U.S. person, U.S. owned foreign entity, or owner-documented FFI were a payee who is an individual and citizen of the United States. If a participating FFI makes such

an election, the FFI is required to report the information required under this paragraph (d)(5) with respect to each such U.S. account or account held by an owner-documented FFI, regardless of whether the account holder of such account qualifies as a recipient exempt from reporting by a payor or middleman under sections 6041, 6042, 6045, or 6049, including the reporting of payments made to such account of amounts that are subject to reporting under any of these sections. A participating FFI that elects to report an account under the election described in this paragraph (d)(5) is required to report the information described in paragraph (d)(5)(ii) or (iii) of this section for a calendar year regardless of whether a reportable payment was made to the U.S. account during the calendar year. A participating FFI that reports an account under the election described in this paragraph (d)(5) is not required to report the information described in paragraph (d)(3) of this section with respect to the account. The election under section 1471(c)(2) described in this paragraph (d)(5)(i)(A) does not apply to cash value insurance contracts or annuity contracts that are financial accounts described in § 1.1471–5(b)(1)(iv). See paragraph (d)(5)(i)(B) of this section for an election to report cash value insurance contracts or annuity contracts that are U.S. accounts held by specified U.S. persons in a manner similar to section 6047(d).

(B) *Election to report in a manner similar to section 6047(d).* Except as otherwise provided in this paragraph (d)(5), a participating FFI may elect to report with respect to any of its cash value insurance contracts or annuity contracts that are U.S. accounts held by specified U.S. persons under section 6047(d), modified as follows. The amount to be reported is the sum of the account balance or value (as of the calendar year end or the most recent contract anniversary date) and any amount paid under the contract during such reporting period as if such participating FFI were a U.S. payor. Each holder of a U.S. account that is a specified U.S. person is treated for purposes of reporting under this paragraph (d)(5)(i)(B) as a contract holder or payee who is an individual and citizen of the United States.

(ii) *Additional information to be reported.* In addition to the information otherwise required to be reported under sections 6041, 6042, 6045, 6047(d) (in the manner described in paragraph (d)(5)(i)(B) of this section with respect to U.S. accounts held by specified U.S. persons), and 6049, including the reporting of payments made to such accounts subject to reporting under the applicable section, a participating FFI that elects to report under this paragraph (d)(5)(ii) must report with respect to each account that it is required to treat as a U.S. account—

(A) In the case of an account holder that is a specified U.S. person—

(*1*) The name, address, and TIN of the account holder; and

(*2*) The account number; and

(B) In the case of an account holder that is a U.S. owned foreign entity that is an NFFE—

(*1*) The name of such entity;

(*2*) The name, address, and TIN of each substantial U.S. owner of such entity; and

(*3*) The account number.

(iii) *Special reporting of accounts held by owner-documented FFIs.* With respect to each account held by an owner-documented FFI, a participating FFI that elects to report under this paragraph (d)(5) must report payments made to the owner-documented FFI under the requirements of sections 6041, 6042, 6045, 6047(d), and 6049, the other information required under each applicable section, and the following information—

(A) The name of such FFI;

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*); and

(C) The account number for the account held by the owner-documented FFI.

(iv) *Branch reporting.* A participating FFI that reports the information described in paragraphs (d)(5)(ii) and (iii) of this section shall also report the jurisdiction of the branch that maintains the account being reported.

(v) *Time and manner of making the election.* A participating FFI (or one or more branches of the participating FFI) may make the election described in this paragraph (d)(5) by reporting the information described in this paragraph (d)(5) on the form described in paragraph (d)(5)(vii) of this section on the next reporting date following the calendar year for which the election is made.

(vi) *Revocation of election.* A participating FFI may revoke the election described in paragraph (d)(5)(i) (as a whole or with regard to any of its accounts) by reporting the information described in paragraph (d)(3) on the next reporting date following the calendar year for which the election is revoked.

(vii) *Filing of information under election.* In the case of an account holder that is a specified U.S. person, the information required to be reported under the election described in this paragraph (d)(5) shall be filed with the IRS and issued to the account holder in the time and manner prescribed in sections 6041, 6042, 6045, 6047(d), and 6049 and in accordance with the forms referenced therein and their accompanying instructions provided by the IRS for reporting under each of these sections. If the account holder is an NFFE that is a U.S. owned foreign entity or owner-documented FFI, however, the information required to be reported under the election described in this paragraph (d)(5) shall be filed on Form 8966 in accordance with its requirements and its accompanying instructions.

(6) *Reporting on recalcitrant account holders*—(i) *In general.* Except as otherwise provided in a Model 2 IGA, a participating FFI, as part of its reporting responsibilities under this paragraph (d), shall report to the IRS for each calendar year the information described for each of the classes of account holders described in paragraphs (d)(6)(A) through (E) of this section. See § 1.1474–1(d)(4)(ii) for a participating FFI or registered deemed-compliant FFI's requirement to report chapter 4 reportable amounts paid to such account holders and tax withheld.

(A) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year that are described in § 1.1471–5(g)(2)(iv) (referencing passive NFFEs that are recalcitrant account holders).

(B) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year that are described in § 1.1471–5(g)(2)(ii) and (iii) (referencing U.S. persons that are recalcitrant account holders).

(C) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year, other than accounts described in paragraph (d)(6)(i)(A), (B), or (E) of this section, that have U.S. indicia.

(D) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year, other than accounts described in paragraph (d)(6)(i)(A) or (E) of this section, that do not have U.S. indicia.

(E) The aggregate number and aggregate balance or value of accounts held by recalcitrant account holders at the end of the calendar year that are dormant accounts.

(ii) *Definition of dormant account.* A dormant account is an account (other than a cash value insurance contract or annuity contract) that is a dormant or

inactive account under applicable laws or regulations or the normal operating procedures of the participating FFI that are consistently applied for all accounts maintained by such institution in a particular jurisdiction. If neither applicable laws or regulations nor the normal operating procedures of the participating FFI maintaining the account address dormant or inactive accounts, an account will be a dormant account if—

(A) The account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the FFI in the past three years; and

(B) The account holder has not communicated with the FFI that maintains such account regarding the account or any other account held by the account holder with the FFI in the past six years.

(iii) *End of dormancy.* An account that is a dormant account under paragraph (d)(6)(ii) of this section ceases to be a dormant account when—

(A) The account holder initiates a transaction with regard to the account or any other account held by the account holder with the FFI;

(B) The account holder communicates with the FFI that maintains such account regarding the account or any other account held by the account holder with the FFI; or

(C) The account ceases to be a dormant account under applicable laws or regulations or the participating FFI's normal operating procedures.

(iv) *Forms.* Reporting under paragraph (d)(6)(i) of this section shall be filed on Form 8966 in accordance with its requirements and accompanying instructions.

(v) *Time and manner of filing.* Except as provided in paragraph (d)(7)(iv)(B) of this section, Form 8966 shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates. See the accompanying instructions to this form for electronic filing instructions.

(vi) *Record retention requirements.* A participating FFI that produces, in the ordinary course of its business, account statements that summarize the activity (including withdrawals, transfers, and closures) of an account held by a recalcitrant account holder described in paragraph (d)(6)(i)(B) of this section for any calendar year in which the account was required to be reported under paragraph (d)(6) of this section must retain a record of such account statements. Such record must be retained for the longer of six years or the retention period under the FFI's normal business procedures. A participating FFI may be required to extend the six year retention period if the IRS requests such an extension prior to the expiration of the six year period.

(7) *Special reporting rules with respect to the 2013 through 2015 calendar years*—(i) *In general.* If the effective date of the FFI agreement of a participating FFI is on or before December 31, 2014, the participating FFI is required to report U.S. accounts and accounts held by owner-documented FFIs that it maintained (or that is otherwise required to report under paragraph (d)(2)(ii) of this section) during the 2013, 2014, and 2015 calendar years in accordance with paragraph (d)(7)(ii) or (iii) of this section.

(ii) *Participating FFIs that report under § 1.1471–4(d)(3).* With respect to accounts that a participating FFI is required to report in accordance with paragraph (d)(2) of this section, the participating FFI may, instead of the information described in paragraphs (d)(3)(ii) and (iii) of this section, report only the following information—

(A) *Reporting with respect to the 2013 and 2014 calendar years.* With respect to accounts maintained during the 2013 and 2014 calendar years—

(*1*) The name, address, and TIN of each specified U.S. person who is an account holder and, in the case of any account holder that is an NFFE that is a U.S. owned foreign entity or that is an owner-documented FFI, the name of such entity and the name, address, and TIN of each substantial U.S. owner of such NFFE or, in the case of an owner-documented FFI, of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*);

(*2*) The account balance or value as of the end of the relevant calendar year, or if the account was closed after the effective date of the FFI agreement, the amount or value withdrawn or transferred from the account in connection with closure; and

(*3*) The account number of the account.

(B) *Reporting with respect to the 2015 calendar year.* With respect to the 2015 calendar year, the participating FFI may report only—

(*1*) The information described in paragraph (d)(7)(ii)(A) of this section; and

(*2*) The payments made with respect to the account except for those payments described in paragraph (d)(4)(iv)(B)(*3*) of this section (certain gross proceeds).

(iii) *Participating FFIs that report under § 1.1471–4(d)(5).* A participating FFI that elects to report under paragraph (d)(5) of this section may report only the information described in paragraphs (d)(7)(ii)(A)(*1*) and (*3*) of this section for its 2013 and 2014 calendar years. With respect to its 2015 calendar year, a participating FFI is required to report all of the information required to be reported under paragraphs (d)(5)(i) through (iii) of this section but may exclude from such reporting amounts reportable under section 6045.

(iv) *Forms for reporting*—(A) *In general.* Except as provided in paragraph (d)(7)(iv)(B) of this section, reporting under paragraph (d)(7)(ii) of this section shall be made on Form 8966 (or such other form as the IRS may prescribe), in the manner described in paragraph (d)(3)(vii) of this section. Reporting under paragraph (d)(7)(iii) of this section shall be made in accordance with paragraph (d)(5)(vii) of this section.

(B) *Special determination date and timing for reporting with respect to the 2013 calendar year.* With respect to the 2013 calendar year, a participating FFI must report under paragraph (d)(3) or (5) of this section on all accounts that are identified and documented under paragraph (c) of this section as U.S. accounts or accounts held by owner-documented FFIs as of December 31, 2014, (or as of the date an account is closed if the account is closed prior to December 31, 2014) if such account was outstanding on December 31, 2013. Reporting for both the 2013 and 2014 calendar year shall be filed with the IRS on or before March 31, 2015. However, a U.S. payor (including a U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person) that reports in accordance with paragraph (d)(2)(iii) of this section may report all or a portion of its U.S. accounts and accounts held by owner-documented FFIs in accordance with the dates otherwise applicable to reporting under chapter 61 with respect to the 2013 calendar year.

(8) *Reporting requirements of QIs, WPs and WTs.* See the QI, WP, or WT agreement for the reporting requirements of a participating FFI that is a QI, WP, or WT with respect to U.S. accounts that it maintains.

(9) *Examples.* The following examples illustrate the provisions of this paragraph (d):

Example 1. Financial institution required to report U.S. account. PFFI1, a participating FFI, issues shares of stock that are financial accounts under § 1.1471–5(b). Such shares are held in custody by PFFI2, another participating FFI, on behalf of U, a specified U.S. person that holds an account with PFFI2. The shares of PFFI1 held by PFFI2 will not be subject to reporting by PFFI1 if PFFI1 may treat PFFI2 as a participating FFI

under § 1.1471–3(d)(3). See paragraph (d)(2)(ii)(A) of this section.

Example 2. Financial institution required to report U.S. account. U, a specified U.S. person, holds shares in PFFI1, a participating FFI that invests in other financial institutions (a fund of funds). The shares of PFFI1 are financial accounts under § 1.1471–5(b)(3)(iii). PFFI1 holds shares that are also financial accounts under § 1.1471–5(b)(3)(iii) in PFFI2, another participating FFI. The shares of PFFI2 held by PFFI1 are not subject to reporting by PFFI2, if PFFI2 may treat PFFI1 as a participating FFI under § 1.1471–3(d)(3). See paragraph (d)(2)(ii)(A) of this section.

Example 3. U.S. owned foreign entity. FC, a passive NFFE, holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of FC. Q, another specified U.S. person, owns 12% of the only class of stock of FC. U is not a substantial U.S. owner of FC. See § 1.1473–1(b). Q is a substantial U.S. owner of FC and FC identifies her as such to PFFI1. PFFI1 does not elect to report under paragraph (d)(5) of this section. PFFI1 must complete and file the reporting form described in paragraph (d)(3)(vi) of this section and report the information described in paragraph (d)(3)(iii) with respect to both FC and Q. See paragraph (d)(3)(ii) of this section.

Example 4. Election to perform Form 1099 reporting with regard to an NFFE. Same facts as in *Example 3,* except that PFFI1 has made the election in accordance with paragraph (d)(5) of this section. PFFI1 must complete and file the forms described in paragraph (d)(5)(vii) for FC, treating FC as if it were an individual and citizen of the United States and must identify Q as a substantial U.S. owner of FC on such form. See paragraph (d)(5)(ii) of this section. PFFI1 shall not complete the forms described in paragraph (d)(5)(vii) with regard to U.

Example 5. Owner-documented FFI. DC, an owner-documented FFI under § 1.1471–3(d)(6), holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of DC. Q, another specified U.S. person, owns 12% of the only class of stock of DC. Both U and Q are persons identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and DC identifies U and Q to PFFI1 and otherwise provides to PFFI1 all of the information required to be reported with respect to DC. PFFI1 must complete and file a form described in paragraph (d)(3)(vi) of this section with regard to U and Q. See paragraph (d)(3)(iii) of this section.

Example 6. Election to perform Form 1099 reporting with regard to an owner-documented FFI. Same facts as in *Example 5,* except that PFFI1 has made the election in accordance with paragraph (d)(5) of this section. PFFI1 must complete and file the forms described in paragraph (d)(5)(vii) for U and Q.

Example 7. Sponsored FFI. DC2 is an FFI that has agreed to have a sponsoring entity, PFFI1, fulfill DC2's chapter 4 responsibilities under § 1.1471–5(f)(2)(iii). U, a specified U.S. person, holds an equity interest in DC2 that is a financial account under § 1.1471–5(b)(3)(iii). PFFI1 must complete and file a form described in paragraph (d)(3)(vi) of this section with regard to U's account on behalf of DC2. See paragraph (d)(2)(ii)(C) of this section.

(e) *Expanded affiliated group requirements*—(1) *In general.* Except as otherwise provided in this paragraph (e)(1) or paragraphs (e)(2) and (e)(3) of this section, each FFI that is a member of an expanded affiliated group must have the chapter 4 status of a participating FFI or registered deemed-compliant FFI as a condition for any member of such group to obtain the status of a participating FFI or registered deemed-compliant FFI. Accordingly, except as otherwise provided in published guidance, each FFI in an expanded affiliated group must submit a registration form to the IRS in such manner as the IRS may prescribe requesting an FFI agreement, registered deemed-compliant status, or limited FFI status as a condition for any member to become a participating FFI or registered deemed-compliant FFI. Except as provided in paragraph (e)(2) of this section, each FFI that is a member of such group must also agree to all of the requirements for the status for which it applies with respect to all accounts maintained at all of its branches, offices, and divisions. For the withholding requirements of a participating FFI with respect to limited branches and affiliates that are limited FFIs, see paragraph (b)(5) of this section. Notwithstanding the foregoing, an FFI (or branch thereof) that is treated as a participating FFI or a deemed-compliant FFI pursuant to a Model 1 IGA or Model 2 IGA will maintain such status provided that it meets the terms for such status pursuant to such agreement.

(2) *Limited branches*—(i) *In general.* An FFI that otherwise satisfies the requirements for participating FFI status as described in this section will be allowed to become a participating FFI notwithstanding that one or more of its branches cannot satisfy all of the requirements of a participating FFI as described in this section if—

(A) All branches (as defined in paragraph (e)(2)(ii) of this section) that cannot satisfy all of the requirements of a participating FFI as described in this section are limited branches as described in paragraph (e)(2)(iii) of this section;

(B) The FFI maintains at least one branch that complies with all of the requirements of a participating FFI, even if the only branch that can comply is a U.S. branch; and

(C) The FFI agrees to and complies with the conditions in paragraph (e)(2)(iv) of this section.

(ii) *Branch defined.* For purposes of this section, a branch is a unit, business, or office of an FFI that is treated as a branch under the regulatory regime of a country or is otherwise regulated under the laws of such country as separate from other offices, units, or branches of the FFI and that maintains books and records separate from the books and records of other branches of the FFI. For purposes of this section, a branch includes units, businesses, and offices of an FFI located in the country in which the FFI is created or organized. All units, businesses, or offices of a participating FFI in a single country shall be treated as a single branch for purposes of this paragraph (e)(2). An account will be treated as maintained by a branch for purposes of this paragraph (e)(2) if the rights and obligations of the account holder and the participating FFI with regard to such account (including any assets held in the account) are governed by the laws of the country of the branch.

(iii) *Limited branch defined.* A limited branch is a branch of an FFI that, under the laws of the jurisdiction as of February 15, 2012, and that apply with respect to the accounts maintained by the branch, cannot satisfy the conditions of both paragraphs (e)(2)(iii)(A) and (B) of this section, but with respect to which the FFI will agree to the conditions of paragraph (e)(2)(iv) of this section.

(A) With respect to accounts that pursuant to this section the participating FFI is required to treat as U.S. accounts, either report such accounts to the IRS as described in paragraph (d) of this section, close such accounts within a reasonable period of time, or transfer such accounts to a U.S. financial institution, a branch of the FFI that will so report, a participating FFI, or a reporting Model 1 FFI.

(B) With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, withhold with respect to each such account as required under paragraph (b) of this section, block each such account (as defined in this paragraph), close each such account within a reasonable period of time, or transfer each such account to a U.S. financial institution, a branch of the FFI that will so report, a participating FFI, or a reporting Model 1 FFI. For purposes of this paragraph (e)(2)(iii)(B), an account is a blocked account if the FFI prohibits the account holder from effecting any transactions with respect to an account until such time as the account is closed, transferred, or the account holder provides the documentation described in paragraph (c) of this section for the FFI to determine the U.S. or non-U.S. status of the account and report the account if

required under paragraph (d) of this section.

(iv) *Conditions for limited branch status.* An FFI with one or more limited branches must satisfy the following requirements when applying for participating FFI status with the IRS—

(A) Identify the relevant jurisdiction of each branch for which it seeks limited branch status;

(B) Agree that each such branch will identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain account holder documentation pertaining to those identification requirements for six years from the effective date of the FFI agreement, and report to the IRS with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the branch;

(C) Agree to treat each such branch as an entity separate from its other branches for purposes of the withholding requirements described in paragraph (b)(5) of this section;

(D) Agree that each such branch will not open accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs, including accounts transferred from any branch of the FFI or from any member of its expanded affiliated group; and

(E) Agree that each limited branch will identify itself to withholding agents as a nonparticipating FFI (including to affiliates of the FFI in the same expanded affiliated group that are withholding agents).

(v) *Term of limited branch status (transitional).* An FFI that becomes a participating FFI with one or more limited branches will cease to be a participating FFI after December 31, 2015, unless otherwise provided pursuant to Model 1 IGA or Model 2 IGA. A branch will cease to be a limited branch as of the beginning of the third calendar quarter following the date on which the branch is no longer prohibited from complying with the requirements of a participating FFI as described in this section. In such case, a participating FFI will retain its status as a participating FFI if it notifies the IRS by the date such branch ceases to be a limited branch that it will comply with the requirements of an FFI agreement with respect to such branch, or if otherwise provided pursuant to a Model 1 IGA or Model 2 IGA.

(3) *Limited FFI*—(i) *In general.* An FFI will be allowed to become either a participating FFI or a registered deemed-compliant FFI notwithstanding that one or more of the FFIs in the expanded affiliated group of which the FFI is a member cannot comply with all of the requirements of a participating FFI as described in this section if each such FFI is a limited FFI under paragraph (e)(3)(ii) of this section.

(ii) *Limited FFI defined.* A limited FFI is a member of an expanded affiliated group that includes one or more participating FFIs that agrees to the conditions described in paragraph (e)(3)(iii) of this section to become a limited FFI and if under the laws of each jurisdiction that apply with respect to the accounts maintained by the affiliate, the affiliate cannot satisfy the conditions of both paragraphs (e)(3)(ii)(A) and (B) of this section.

(A) With respect to accounts that are U.S. accounts, report such accounts to the IRS as described in paragraph (d) of this section, close such accounts within a reasonable period of time, or transfer such accounts to a U.S. financial institution, a participating FFI, or a reporting Model 1 FFI.

(B) With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, withhold with respect to each such account as required under paragraph (b) of this section, block each such account, close each such account within a reasonable period of time, or transfer each such account to a U.S. financial institution, a participating FFI, or a reporting Model 1 FFI. See paragraph (e)(2)(ii)(B) of this section for when an account is considered blocked.

(iii) *Conditions for limited FFI status.* An FFI that seeks to become a limited FFI must—

(A) Register as part of its expanded affiliated group's FFI agreement process for limited FFI status;

(B) Agree as part of such registration to identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain account holder documentation pertaining to those identification requirements for six years from the effective date of its registration as a limited FFI, and report with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the FFI;

(C) Agree as part of such registration that it will not open accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs, including accounts transferred from any member of its expanded affiliated group; and

(D) Agree as part of such registration that it will identify itself to withholding agents as a nonparticipating FFI.

(iv) *Period for limited FFI status (transitional).* A limited FFI will cease to be a limited FFI after December 31, 2015. An FFI will also cease to be a limited FFI when it becomes a participating FFI or deemed-compliant FFI, or as of the beginning of the third calendar quarter following the date on which the FFI is no longer prohibited from complying with the requirements of a participating FFI as described in this section. In such case, participating FFIs and deemed-compliant FFIs that are members of the same expanded affiliated group will retain their status if, by the date that an FFI ceases to be a limited FFI, such FFI enters into an FFI agreement or becomes a registered deemed-compliant FFI, unless otherwise provided pursuant to an applicable Model 1 IGA or Model 2 IGA.

(4) *Special rule for QIs.* An FFI that has in effect a QI agreement with the IRS will be allowed to become a limited FFI notwithstanding that none of the FFIs in the expanded affiliated group of which the FFI is a member can comply with the requirements of a participating FFI as described in this section if the FFI that is a QI meets the conditions of a limited FFI under paragraph (e)(3)(ii) of this section.

(f) *Verification*—(1) *In general.* This paragraph (f) describes the requirement for a participating FFI to establish and implement a compliance program for satisfying its requirements under this section. Paragraph (f)(2) of this section provides the requirement for a participating FFI to establish a compliance program and the option for a group of FFIs to adopt a consolidated compliance program. Paragraph (f)(3) describes the periodic certification that the participating FFI must make to the IRS regarding the participating FFI's compliance with the requirements of an FFI agreement. Paragraph (f)(4) describes IRS information requests related to compliance with an FFI agreement.

(2) *Compliance program*—(i) *In general.* The participating FFI must appoint a responsible officer to oversee the participating FFI's compliance with the requirements of the FFI agreement. The responsible officer must (either personally or through designated persons) establish a compliance program that includes policies, procedures, and processes sufficient for the participating FFI to satisfy the requirements of the FFI agreement. The responsible officer (or designee) must periodically review the sufficiency of the FFI's compliance program and the FFI's compliance with the requirements of an FFI agreement during the certification period described in paragraph (f)(3) of this section. The results of the periodic review must be

considered by the responsible officer in making the periodic certifications required under paragraph (f)(3) of this section.

(ii) *Consolidated compliance program*—(A) *In general.* A participating FFI that is a member of an expanded affiliated group that includes one or more FFIs may elect to be part of a consolidated compliance program (and perform a consolidated periodic review) under the authority of a participating FFI, reporting Model 1 FFI, or U.S. financial institution (compliance FI) that is a member of the electing FFI's expanded affiliated group, regardless of whether all such members so elect. A sponsoring entity is required to act as the compliance FI for the sponsored FFI group. In addition, when an FFI elects to be part of a consolidated compliance program, each branch that it maintains (including a limited branch or a branch described in § 1.1471–5(f)(1)) must be subject to periodic review as part of such program.

(B) *Requirements of compliance FI.* A participating FFI, reporting Model 1 FFI, or U.S. financial institution that agrees to establish and maintain a consolidated compliance program and perform a consolidated periodic review on behalf of one or more FFIs (the compliance group), must agree to identify itself as the compliance FI and identify each FFI for which it acts (an electing FFI) to the extent required by the IRS as part of the FFI registration process or certification procedures. The agreement between the compliance FI and each electing FFI must permit either the compliance FI or the electing FFI to terminate the agreement upon a finding by the IRS or by either party that the other party to the agreement is not fulfilling its obligations under the agreement or is no longer able to fulfill such obligations.

(3) *Certification of compliance*—(i) *In general.* In addition to the certifications required under paragraph (c)(7) of this section, six months following the end of each certification period, the responsible officer must make the certification described in either paragraph (f)(3)(ii) or (iii) of this section. The first certification period begins on the effective date of the FFI agreement and ends at the close of the third full calendar year following the effective date of the FFI agreement. Each subsequent certification period is the three calendar year period following the previous certification period, unless the FFI agreement provides for a different period. The responsible officer must either certify that the participating FFI maintains effective internal controls or, if the participating FFI has failed to remediate any material failures (defined in paragraph (f)(3)(iv) of this section) as of the date of the certification, must make the qualified certification described in paragraph (f)(3)(iii) of this section.

(ii) *Certification of effective internal controls.* The responsible officer must certify to the following statements—

(A) The responsible officer (or designee) has established a compliance program that is in effect as of the date of the certification and that has been subjected to the review as described in paragraph (f)(2)(i) of this section;

(B) With respect to material failures—

(*1*) There are no material failures for the certification period; or

(*2*) If there are any material failures, appropriate actions were taken to remediate such failures and to prevent such failures from reoccurring; and

(C) With respect to any failure to withhold, deposit, or report to the extent required under the FFI agreement, the FFI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).

(iii) *Qualified certification.* If the responsible officer has identified an event of default or a material failure that the participating FFI has not corrected as of the date of the certification, the responsible officer must certify to the following statements—

(A) With respect to the event of default or material failure—

(*1*) The responsible officer (or designee) has identified an event of default as defined in paragraph (g)(1) of this section; or

(*2*) The responsible officer has determined that as of the date of the certification, there are one or more material failures with respect to the participating FFI's compliance with the FFI agreement and that appropriate actions will be taken to prevent such failures from reoccurring;

(B) With respect to any failure to withhold, deposit, or report to the extent required under the FFI agreement, the FFI will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return); and

(C) The responsible officer (or designee) will respond to any notice of default (if applicable) or will provide to the IRS, to the extent requested, a description of each material failure and a written plan to correct each such failure.

(iv) *Material failures defined.* A material failure is a failure of the participating FFI to fulfill the requirements of the FFI agreement if the failure was the result of a deliberate action on the part of one or more employees of the participating FFI (its agent, sponsor, or compliance FI) to avoid the requirements of the FFI agreement or was an error attributable to a failure of the participating FFI to implement internal controls sufficient for the participating FFI to meet the requirements of this section. A material failure will not constitute an event of default unless such material failure occurs in more than limited circumstances when a participating FFI has not substantially complied with the requirements of an FFI agreement. Material failures include the following—

(A) The deliberate or systemic failure of the participating FFI to report accounts that it was required to treat as U.S. accounts, withhold on passthru payments to the extent required, deposit taxes withheld, or accurately report recalcitrant account holders or payees that are nonparticipating FFIs as required;

(B) A criminal or civil penalty or sanction imposed on the participating FFI (or any branch or office thereof) by a regulator or other governmental authority or agency with oversight over the participating FFI's compliance with the AML due diligence procedures to which it (or any branch or office thereof) is subject and that is imposed based on a failure to properly identify account holders under the requirements of those procedures; and

(C) A potential future tax liability related to the participating FFI's compliance (or lack thereof) with the FFI agreement for which the FFI establishes, for financial statement purposes, a tax reserve or provision.

(4) *IRS review of compliance*—(i) *General inquiries.* The IRS, based upon the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vi), or (d)(6)(iv) of this section filed with the IRS for each calendar year, may request additional information with respect to the information reported on the forms or may request the account statements described in paragraph (d)(4)(v) of this section.

(ii) *Inquiries regarding substantial non-compliance.* If, based on the information reporting forms described in paragraphs (d)(3)(v), (d)(5)(vi), or (d)(6)(iv) of this section filed with the IRS for each calendar year, the certifications made by the responsible officer described in paragraph (f)(3) of this section, or any other information related to the participating FFI's compliance with its FFI agreement, the IRS determines in its discretion that the

participating FFI may not have substantially complied with the requirements of an FFI agreement, the IRS may request from the responsible officer (or designee) information necessary to verify the participating FFI's compliance with the FFI agreement. The IRS may request, for example, a description or copy of the participating FFI's policies and procedures for fulfilling the requirements of the FFI agreement, a description of the participating FFI's procedures for conducting its periodic review, or a copy of any written reports documenting the findings of such review in order to evaluate the sufficiency of the participating FFI's compliance program and review of such program. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the facts and circumstances surrounding the FFI's potential failure to comply with the FFI agreement.

(g) *Event of default*—(1) *Defined.* An event of default occurs if a participating FFI fails to perform material obligations required with respect to the due diligence, withholding, or reporting requirements of the FFI agreement or if the IRS determines that the participating FFI has failed to substantially comply with the requirements of the FFI agreement. An event of default also includes the occurrence of the following—

(i) Failure to obtain, in any case in which foreign law would (but for a waiver) prevent the reporting of U.S. accounts required under paragraph (d) of this section, valid and effective waivers from holders of U.S. accounts or failure to otherwise close or transfer such U.S. accounts as required under paragraph (i) of this section;

(ii) Failure to significantly reduce, over a period of time, the number of account holders or payees that the participating FFI is required to treat as recalcitrant account holders or nonparticipating FFIs;

(iii) Failure, in any case in which foreign law prevents or otherwise limits withholding to the extent required under paragraph (b) of this section, to fulfill the requirements of paragraph (i) of this section;

(iv) Failure to establish or maintain a compliance program for fulfilling the requirements of the FFI agreement or to perform a periodic review of the participating FFI's compliance;

(v) Failure to take timely corrective actions to remedy a material failure described in paragraph (f)(3)(iv) of this section after making the qualified certification described in paragraph (f)(3)(iii) of this section;

(vi) Failure to make the initial certification required under paragraph (c)(7) of this section or to make the periodic certification required under paragraph (f)(3) of this section within the specified time period;

(vii) Making incorrect claims for refund under the collective refund procedures described in paragraph (h) of this section;

(viii) Failure to cooperate with an IRS request for additional information or making any fraudulent statement or misrepresentation of material fact to the IRS; or

(ix) Any transaction relating to sponsorship, promotion, or noncustodial distribution for or on behalf of any Local FFI, as described in § 1.1471–5(f)(1)(i)(A), that is an investment entity.

(2) *Notice of event of default.* Following an event of default known by or disclosed to the IRS, the IRS will deliver to the participating FFI a notice of default specifying the event of default. The IRS will request that the participating FFI remediate the event of default within a specified time period. The participating FFI must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the participating FFI does not agree that an event of default has occurred. Taking into account the terms of any applicable Model 2 IGA, if the participating FFI does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice of termination that terminates the FFI's participating FFI status. A participating FFI may request, within a reasonable period of time, reconsideration of a notice of default or notice of termination by written request to the LB&I, Assistant Deputy Commissioner (International).

(3) *Remediation of event of default.* A participating FFI will be permitted to remediate an event of default to the extent that it agrees with the IRS on a remediation plan. Such a plan may, for example, allow a participating FFI to remediate an event of default described in paragraph (g)(1)(iii) of this section by providing specific information regarding its U.S. accounts when the FFI has been unable to report all of the information with respect to such accounts as required under paragraph (d) of this section and has been unable to close or transfer such accounts. The IRS may, as part of a remediation plan, require additional information from the FFI or the performance of the specified review procedures described in paragraph (f)(4)(ii) of this section.

(h) *Collective credit or refund procedures for overpayments*—(1) *In general.* Except as otherwise provided in the FFI agreement, if there has been an overpayment of tax with respect to an account holder or payee of a participating FFI or reporting Model 1 FFI resulting from tax withheld under chapter 4 by either the participating FFI or reporting Model 1 FFI or by its withholding agent during a calendar year and the amount withheld has not been recovered under the reimbursement or set-off procedures described in § 1.1474–2(a) (applied by either the withholding agent or the participating FFI or reporting Model 1 FFI), the participating FFI or reporting Model 1 FFI may request a credit or refund from the IRS of the overpayment to the extent permitted under this paragraph (h) on behalf of such account holder or payee. For purposes of this paragraph (h), an overpayment means an amount withheld in excess of the account holder or payee's U.S. tax liability with respect to the payment (including overwithholding as defined § 1.1474–2(a)(2)). If a participating FFI or reporting Model 1 FFI does not elect the procedure provided in this paragraph (h) to request a credit or refund, the participating FFI or reporting Model 1 FFI is required to (or must request that its withholding agent) file and furnish within a reasonable period a Form 1042–S (or such other form as the IRS may prescribe) and Form 1042 (or amended forms) to report to any account holder or payee that has requested such form with regard to the tax withheld by the participating FFI or reporting Model 1 FFI or its withholding agent.

(2) *Persons for which a collective refund is not permitted.* A participating FFI or reporting Model 1 FFI cannot include in its collective refund claim any payments made to an account holder or payee that is a nonparticipating FFI, a participating FFI or reporting Model 1 FFI that is a flow-through entity (including a WP or WT) or that is acting as an intermediary (including a QI), a U.S. person, or a passive NFFE that is a flow-through entity with respect to taxes allocated to its substantial U.S. owners. A participating FFI or reporting Model 1 FFI must follow the procedures set forth under sections 6402 and 6414 and the regulations thereunder, as modified by this paragraph (h), to claim the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511.

(3) *Payments for which a collective refund is permitted.* A collective refund is permitted only for payments withheld upon under chapter 4.

(4) *Procedural and other requirements for collective refund.* A participating FFI or reporting Model 1 FFI may use the collective refund procedures of this paragraph (h) under the following conditions—

(i) All account holders and payees for which the participating FFI or reporting Model 1 FFI seeks a refund must have been included on a Form 1042–S in a reporting pool of nonparticipating FFIs or recalcitrant account holders described in § 1.1474–1(d)(4)(iii) with respect to the payments for which refund is sought and the participating FFI or reporting Model 1 FFI (or the withholding agent) has not filed or furnished a Form 1042–S to any such account holder or payee with respect to which the refund is sought;

(ii) If a refund is sought on the grounds that the account holder or payee of a payment that is U.S. source FDAP income subject to withholding under chapter 3 is entitled to a reduced rate of tax by reason of any treaty obligation of the United States, the participating FFI or reporting Model 1 FFI has also obtained valid documentation that meets the requirements of chapter 3 for a reduced rate of tax and such documentation is available to the IRS upon request with respect to each such account holder or payee; and

(iii) In filing a claim for refund with the IRS under this paragraph (h), the participating FFI or reporting Model 1 FFI submits the following, together with its Form 1042 (or amended Form 1042) on which it provides a reconciliation of amounts withheld and claims a credit or refund, a schedule identifying the taxes withheld with respect to each account holder or payee to which the claim relates, and, if applicable, a copy of the Form 1042–S (or such other form as the IRS may prescribe) furnished to the participating FFI or reporting Model 1 FFI by its withholding agent reporting the taxes withheld to which the claim relates, and a statement that includes the following representations and explanation—

(A) The reason(s) for the overpayment;

(B) A representation that the participating FFI or reporting Model 1 FFI or its withholding agent deposited the tax for which a refund is being sought under section 6302 and has not applied the reimbursement or set-off procedure of § 1.1474–2 to adjust the tax withheld to which the claim relates;

(C) A representation that the participating FFI or reporting Model 1 FFI has repaid or will repay the amount for which refund is sought to the appropriate account holders or payees;

(D) A representation that the participating FFI or reporting Model 1 FFI retains a record showing the total amount of tax withheld, credits from other withholding agents, tax assumed by the participating FFI or reporting Model 1 FFI, adjustments for underwithholding, and reimbursements for overwithholding as its relates to each account holder and payee and also showing the repayment to such account holders or payees for the amount of tax for which a refund is being sought;

(E) A representation that the participating FFI or reporting Model 1 FFI retains valid documentation that meets the requirements of chapters 3 (if applicable) and 4 to substantiate the amount of overwithholding with respect to each account holder and payee for which a refund is being sought and that such documentation is available to the IRS upon request; and

(F) A representation that the participating FFI or reporting Model 1 FFI will not issue a Form 1042–S (or such other form as the IRS may prescribe) to any account holder or payee for which a refund is being sought.

(i) *Legal prohibitions on reporting U.S. accounts and withholding*—(1) *In general.* A participating FFI (or branch thereof) that is prohibited by foreign law from reporting the information required under paragraph (d) of this section with respect to a U.S. account must follow the procedures of paragraph (i)(2) of this section to obtain a valid and effective waiver of such law and, if such waiver is not obtained within a reasonable period of time, to close or transfer such account. A participating FFI (or branch thereof) that is prohibited by law from withholding with respect to a recalcitrant account holder or nonparticipating FFI as required under paragraph (b) of this section is required to perform the procedures of paragraph (i)(3) of this section to obtain an authorization to withhold on payments made to the account holder or payee to the extent required under paragraph (b) of this section, close the account or terminate the obligation (as applicable), or to sell the assets in the account that produce (or could produce) withholdable payments and, if such authorization is not obtained within a reasonable period of time, to transfer or block such account or obligation. An FFI that cannot comply with any of the requirements of this paragraph (i) is not eligible to enter into an FFI agreement with the IRS, but may obtain status as a limited FFI if the FFI meets the requirements and agrees to the conditions of paragraph (e)(3) of this section. If a branch of an FFI cannot comply with the requirements of this paragraph (i), then the FFI must agree to the conditions of a limited branch as described in paragraph (e)(2) of this section to obtain status as a participating FFI.

(2) *Requesting waiver or closure of a U.S. account*—(i) *In general.* If a participating FFI (or branch thereof) is prohibited by law from reporting the information required under paragraph (d) of this section with respect to a U.S. account that it maintains unless a valid and effective waiver of such law is obtained, the participating FFI must request a valid and effective waiver (including by obtaining waivers from all relevant account holders if necessary). For accounts other than preexisting accounts, the participating FFI must obtain a valid and effective waiver upon opening the account or, if prohibitions on disclosure cannot by law be waived, the participating FFI must refrain from opening accounts that are U.S. accounts or must transfer such accounts as described in paragraph (i)(2)(iii) of this section. Beginning on the date provided in § 1.1471–5(g)(3) and until such time as the holder of a U.S. account either consents to disclosure or closure of the account or until the account is transferred, the participating FFI is required to treat the account as held by a recalcitrant account holder.

(ii) *Valid and effective waiver for a U.S. account.* For purposes of this paragraph (i)(2), a valid and effective waiver is a waiver that, under the applicable law governing the participating FFI's agreement with the account holder, permits the participating FFI (or branch thereof) to report to the IRS all of the information specified in paragraph (d) of this section with respect to the U.S. account and permits the FFI to provide the IRS with additional information concerning such account as specified in paragraph (f) or (g) of this section.

(iii) *Closure or transfer of U.S. account.* If the participating FFI (or branch thereof) is prohibited by law from reporting a U.S. account to the IRS under paragraph (d) of this section and the participating FFI either does not obtain a valid and effective waiver (and Form W–9) or prohibitions on disclosure cannot by law be waived, the participating FFI (or branch thereof) must close or transfer the account within a reasonable time. If the participating FFI cannot close or transfer the account absent the account

holder consenting to closure, the participating FFI must request such a consent from such account holder and, if obtained, close or transfer the account within a reasonable period of time.

(3) *Legal prohibitions preventing withholding*—(i) *In general.* If the participating FFI (or branch thereof) is prohibited by law from withholding with respect to payments subject to withholding under paragraph (b) of this section, the participating FFI (or a branch thereof) must obtain the authorization described in this paragraph (i)(3)(i) from each account holder or payee receiving such payments to either withhold, close the account or terminate the obligation, or sell all of the assets in the account that produce (or could produce) withholdable payments. If the participating FFI does not receive such authorization from the account holder or payee within a reasonable period of time, the participating FFI must block or transfer such accounts or obligations as described in paragraph (i)(3)(ii) of this section.

(ii) *Block or transfer accounts or obligations.* If the participating FFI does not receive the authorization described in paragraph (i)(3)(i) of this section from the account holder or payee within a reasonable period of time and is prohibited by law from closing accounts or terminating obligations with account holders or payees as described in paragraph (i)(3)(i) of this section, the participating FFI must either block or transfer such accounts or obligations prior to the date on which the participating FFI would otherwise be required to withhold under paragraph (b) of this section. See paragraph (e)(2)(iii)(B) of this section for when an account is considered blocked. A transfer of an account or obligation must be made to a branch of the FFI that may so withhold or to a participating FFI or reporting Model 1 FFI.

(j) *Effective/applicability date.* This section generally applies on January 28, 2013. For other dates of applicability, see §§ 1.1471–4(b)(1), (4); 1.1471–4(d)(7); 1.1471–4(e)(2)(v); 1.1471–4(e)(3)(iv).

■ **Par. 9.** Section 1.1471–5 is added to read as follows:

§ 1.1471–5 Definitions applicable to section 1471.

(a) *U.S. accounts*—(1) *In general.* This paragraph (a) defines the term *U.S. account* and describes when a person is treated as the holder of a financial account (account holder). This paragraph also provides rules for determining when an exception to U.S. account status applies for certain depository accounts, including account aggregation requirements relevant to applying the exception.

(2) *Definition of U.S. account.* Subject to the exception described in paragraph (a)(4)(i) of this section, a U.S. account is any financial account maintained by an FFI that is held by one or more specified U.S. persons or U.S. owned foreign entities. For the definition of the term financial account, see paragraph (b) of this section. For the definition of the term specified U.S. person, see § 1.1473–1(c). For the definition of the term U.S. owned foreign entity, see paragraph (c) of this section. For reporting requirements of participating FFIs with respect to U.S. accounts, see § 1.1471–4(d).

(3) *Account holder*—(i) *In general.* Except as otherwise provided in this paragraph (a)(3), the *account holder* is the person listed or identified as the holder or owner of the account with the FFI that maintains the account, regardless of whether such person is a flow-through entity. Thus, for example, except as otherwise provided in paragraphs (a)(3)(ii) and (iii) of this section, if a trust (including a simple or grantor trust) or an estate is listed as the holder or owner of a financial account, the trust or estate is the account holder, rather than its owners or beneficiaries. Similarly, except as otherwise provided in this paragraph (a)(3), if a partnership is listed as the holder or owner of a financial account, the partnership is the account holder, rather than the partners in the partnership. In the case of an account held by an entity that is disregarded for U.S. federal tax purposes under § 301.7701–2(c)(2)(i) of this chapter, the account shall be treated as held by the person owning such entity. With respect to an account held by an exempt beneficial owner, such account is treated as held by an exempt beneficial owner only when all payments made to such account would be treated as made to an exempt beneficial owner. See § 1.1471–6(h) for when a payment derived from certain commercial activities is not treated as made to an exempt beneficial owner.

(ii) *Grantor trust.* A trust is not treated as an account holder if a person is treated as the owner of the entire trust under sections 671 through 679. In that case, the account is held by the person that is treated as the owner of the trust under such sections. In the case of a person that is treated as the owner of a portion of the trust under sections 671 through 679—

(A) If such person is treated as owning all the assets in the account under sections 671 through 679, the account is treated as held by such person;

(B) If such person is treated as owning a portion of the account or the assets in the account under sections 671 through 679, the account is treated as held by both such person and the trust; and

(C) If such person is not treated as owning any portion of the account or any of the assets in the account under sections 671 through 679, the account is treated as held by the trust.

(iii) *Financial accounts held by agents that are not financial institutions.* A person, other than a financial institution, that holds a financial account for the benefit or account of another person as an agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as an account holder with respect to such account for purposes of this section. Instead, such other person is treated as the account holder.

(iv) *Jointly held accounts.* With respect to a jointly held account, each joint holder is treated as an account holder for purposes of determining whether the account is a U.S. account. Thus, an account is a U.S. account if any of the account holders is a specified U.S. person or a U.S. owned foreign entity and the account is not otherwise excepted from U.S. account status under paragraph (a)(4) of this section. When more than one U.S. person is a joint holder, each U.S. person will be treated as an account holder and will be attributed the entire balance of the jointly held account, including for purposes of applying the aggregation rules set forth in paragraph (b)(4)(iii) of this section.

(v) *Account holder for insurance and annuity contracts.* An insurance or annuity contract is held by each person that is entitled to access the contract's value (for example, through a loan, withdrawal, surrender, or otherwise) or change a beneficiary under the contract. If no person can access the contract's value or change a beneficiary, the account holders are any person named in the contract as an owner and any person who is entitled to receive a future payment under the terms of the contract. When an obligation to pay an amount under the contract becomes fixed, each person entitled to receive a payment is an account holder.

(vi) *Examples.* The following examples illustrate the provisions of paragraph (a)(3) of this section:

Example 1. Account held by agent. F, a nonresident alien, holds a power of attorney from U, a specified U.S. person, that authorizes F to open, hold, and make deposits and withdrawals with respect to a depository account on behalf of U. The balance of the account for the calendar year is $100,000. F is listed as the holder of the

depository account at a participating FFI, but because F holds the account as an agent for the benefit of U, F is not ultimately entitled to the funds in the account. Because the depository account is treated as held by U, a specified U.S. person, the account is a U.S. account.

Example 2. Jointly held accounts. U, a specified U.S. person, holds a depository account in a participating FFI. The balance of the account for the calendar year is $100,000. The account is jointly held with A, an individual who is a nonresident alien. Because one of the joint holders is a specified U.S. person, the account is a U.S. account.

Example 3. Jointly held accounts. U and Q, both specified U.S. persons, hold a depository account in a participating FFI. The balance of the account for the calendar year is $100,000. The account is a U.S. account and both U and Q are treated as holders of the account.

(4) *Exceptions to U.S. account status*—(i) *Exception for certain individual accounts of participating FFIs.* Unless a participating FFI elects under paragraph (a)(4)(ii) of this section not to apply this paragraph (a)(4)(i), the term U.S. account shall not include any depository account maintained by such financial institution during a calendar year if the account is held solely by one or more individuals and, with respect to each holder of such account, the aggregate balance or value of all depository accounts held by each such individual does not exceed $50,000 as of the end of the calendar year or on the date the account is closed. For rules for determining the account balance or value, see paragraphs (a)(3)(iv) and (b)(4) of this section.

(ii) *Election to forgo exception.* A participating FFI may elect to disregard the exception described in paragraph (a)(4)(i) of this section by reporting all U.S. accounts, including those accounts that would otherwise meet the conditions of the exception.

(iii) Example. Aggregation rules for exception to U.S. account status for certain depository accounts. In Year 1, a U.S. resident individual, U, holds a depository account with CB, a commercial bank that is a participating FFI. The balance in U's CB account at the end of Year 1 is $35,000. In Year 1, U also holds a custodial account with CB's brokerage business. The custodial account has a $45,000 balance as of the end of Year 1. CB's retail banking and brokerage businesses share computerized information management systems that associate U's depository account and U's custodial account with U and with one another within the meaning of paragraph (b)(4)(iii)(A) of this section. For purposes of applying the $50,000 threshold described in paragraph (a)(4)(i) of this section, however, a depository account is aggregated only with other depository accounts. Therefore, U's depository account is eligible for the paragraph (a)(4)(i) exception to U.S. account status because the balance of the depository account does not exceed $50,000.

(b) *Financial accounts*—(1) *In general.* Except as otherwise provided in this paragraph (b), the term *financial account* means—

(i) *Depository account.* Any depository account (as defined in paragraph (b)(3)(i) of this section) maintained by a financial institution;

(ii) *Custodial account.* Any custodial account (as defined in paragraph (b)(3)(ii) of this section) maintained by a financial institution;

(iii) *Equity or debt interest*—(A) *Equity or debt interests in an investment entity.* Any equity or debt interest (other than interests regularly traded on an established securities market under paragraph (e)(3)(iv) of this section) in an investment entity described in paragraph (e)(4)(i)(B) or (C) of this section (including an entity that is also a depository institution, custodial institution, insurance company, or investment entity described in paragraph (e)(4)(i)(A) of this section);

(B) *Certain equity or debt interests in a holding company or treasury center.* Any equity or debt interest (other than interests regularly traded on an established securities market under paragraph (e)(3)(iv) of this section) in a holding company or treasury center described in paragraph (e)(1)(v) of this section if—

(*1*) The expanded affiliated group of which the entity is a member includes one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs and the income derived by such investment entities or passive NFFEs is 50 percent or more of the aggregate income earned by the expanded affiliated group;

(*2*) The redemption or retirement amount or return earned on the interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or one or more passive NFFEs that are members of the entity's expanded affiliated group (as determined under paragraph (b)(3)(vi) of this section);

(*3*) The value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments (as determined under paragraph (b)(3)(v)) of this section); or

(*4*) The interest is issued with a principal purpose of avoiding the reporting or withholding requirements of chapter 4;

(C) *Equity or debt interests in other financial institutions.* Any equity or debt interest (other than interests regularly traded on an established securities market under paragraph (e)(3)(iv) of this section) in an entity that is a depository institution, custodial institution, investment entity described in paragraph (e)(4)(i)(A) of this section, or insurance company if—

(*1*) The value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments (as determined under paragraph (b)(3)(v) of this section); or

(*2*) The interest is issued with a principal purpose of avoiding the reporting or withholding requirements of chapter 4.

(iv) *Insurance and annuity contracts.* A contract issued or maintained by an insurance company, a holding company (as described in paragraph (e)(5)(i)(C) of this section) of an insurance company, or a financial institution described in paragraphs (e)(1)(i), (ii), (iii), or (v) of this section, if the contract is a cash value insurance contract (as defined in paragraph (b)(3)(vii) of this section) or an annuity contract.

(2) *Exceptions.* A financial account does not include an account described in this paragraph (b)(2).

(i) *Certain savings accounts*—(A) *Retirement and pension accounts.* A retirement or pension account that satisfies the following conditions under the laws of the jurisdiction where the account is maintained:

(*1*) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

(*2*) The account is tax-favored (as described in paragraph (b)(2)(i)(E) of this section);

(*3*) Annual information reporting is required to the relevant tax authorities with respect to the account;

(*4*) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

(*5*) Either—

(*i*) Annual contributions are limited to $50,000 or less, or

(*ii*) There is a maximum lifetime contribution limit to the account of $1,000,000 or less.

(B) *Non-retirement savings accounts.* An account (other than an insurance or annuity contract) that satisfies the following conditions under the laws of the jurisdiction where the account is maintained:

(*1*) The account is subject to regulation as a savings vehicle for purposes other than for retirement;

(*2*) The account is tax-favored (as described in paragraph (b)(2)(i)(E) of this section);

(*3*) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

(*4*) Annual contributions are limited to $50,000 or less;

(C) *Rollovers.* A financial account that otherwise satisfies the requirements of paragraph (b)(2)(i)(A) or (B) of this section will not fail to satisfy such requirements solely because such financial account may receive assets or funds transferred from one or more financial accounts that meet the requirements of paragraph (b)(2)(i)(A) or (B) of this section or from one or more retirement or pension funds that meet the requirements of paragraph (f)(2)(ii) of this section or § 1.1471–6(f).

(D) *Coordination with section 6038D.* The exclusions provided under paragraph (b)(2)(i) of this section shall not apply for purposes of determining whether an account or other arrangement is a financial account for purposes of section 6038D.

(E) *Account that is tax-favored.* For purposes of this paragraph (b)(2)(i), an account is tax-favored under the laws of a jurisdiction where the account is maintained if—

(*1*) Contributions to the account that would otherwise be subject to tax under such laws are deductible or excluded from the gross income of the account holder or taxed at a reduced rate; or

(*2*) Taxation of investment income from the account is deferred or taxed at a reduced rate.

(ii) *Certain term life insurance contracts.* A life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following conditions—

(A) Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;

(B) The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;

(C) The amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and

(D) The contract is not held by a transferee for value.

(iii) *Account held by an estate.* An account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.

(iv) *Certain escrow accounts.* An escrow account that is established in connection with—

(A) A court order or judgment; or

(B) A sale, exchange, or lease of real or personal property, provided that the account meets the following conditions—

(*1*) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;

(*2*) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;

(*3*) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;

(*4*) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and

(*5*) The account is not associated with a credit card account.

(v) *Certain annuity contracts.* A non-investment linked, non-transferable, immediate life annuity contract (including a disability annuity) that monetizes a retirement or pension account described in paragraph (b)(2)(i)(A) of this section.

(vi) *Account or product excluded under an intergovernmental agreement.* An account or product that is excluded from the definition of financial account under the terms of an applicable Model 1 IGA or Model 2 IGA.

(3) *Definitions.* The following definitions apply for purposes of chapter 4—

(i) *Depository account*—(A) *In general.* Except as otherwise provided in this paragraph (b)(3)(i), the term *depository account* means any account that is—

(*1*) A commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, passbook, certificate of indebtedness, or any other instrument for placing money in the custody of an entity engaged in a banking or similar business for which such institution is obligated to give credit (regardless of whether such instrument is interest bearing or non-interest bearing), including, for example, a credit balance with respect to a credit card account issued by a credit card company that is engaged in a banking or similar business; or

(*2*) Any amount held by an insurance company under a guaranteed investment contract or under a similar agreement to pay or credit interest thereon or to return the amount held.

(B) *Exceptions.* A depository account does not include—

(*1*) A negotiable debt instrument that is traded on a regulated market or over-the-counter market and distributed and held through financial institutions; or

(*2*) An advance premium or premium deposit described in paragraph (b)(3)(vii)(C)(*5*) of this section.

(ii) *Custodial account.* The term *custodial account* means an arrangement for holding a financial instrument, contract, or investment (including, but not limited to, a share of stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract as defined in § 1.446–3(c), an insurance or annuity contract, and any option or other derivative instrument) for the benefit of another person.

(iii) *Equity interest in certain entities*—(A) *Partnership.* In the case of a partnership that is a financial institution, the term *equity interest* means either a capital or profits interest in the partnership.

(B) *Trust.* In the case of a trust that is a financial institution, an *equity interest* means an interest held by—

(*1*) A person who is an owner of all or a portion of the trust under sections 671 through 679;

(*2*) A beneficiary who is entitled to a mandatory distribution from the trust as defined in § 1.1473–1(b)(3); or

(*3*) A beneficiary who may receive a discretionary distribution as defined in § 1.1473–1(b)(3) from the trust but only if such person receives a distribution in the calendar year.

(iv) *Regularly traded on an established securities market.* Debt or equity interests described in paragraph (b)(1)(iii) of this section are regularly traded on an established securities market if the requirements of § 1.1472–1(c)(1)(i)(A) and (C) are met. For purposes of paragraph (b)(1)(iii) of this section, an interest is not regularly traded on an established securities market if the holder of the interest (excluding a financial institution acting as an intermediary) is registered on the books of the investment entity. The preceding sentence shall not apply to the extent a holder's interest is registered prior to January 1, 2014, on the books of the investment entity.

(v) *Value of interest determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments*—(A) *Equity interest.* The value of an equity interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if—

(*1*) The amount payable upon redemption by the issuer of the interest is secured primarily by reference to assets that give rise (or could give rise) to withholdable payments; or

(*2*) In the case of an unsecured interest, the amount payable upon redemption is determined primarily by reference to assets that give rise (or could give rise) to withholdable payments.

(B) *Debt interest.* The value of a debt interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments if—

(*1*) Debt is convertible into stock of a U.S. person;

(*2*) Amounts payable as interest or upon redemption or retirement of the debt are determined primarily by reference to profits or assets of a U.S person; or

(*3*) The debt is secured by assets of a U.S. person.

(vi) *Redemption or retirement amount or return earned on the interest determined, directly or indirectly, primarily by reference to one or more investment entities or passive NFFEs*—(A) *Equity interest.* The return earned on an equity interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group if the return on such interest (including upon a sale, exchange, or redemption) is determined primarily by reference to the value or income (including the value of or income from one or more assets) of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group.

(B) *Debt interest.* The redemption or retirement amount or return earned on a debt interest is determined, directly or indirectly, primarily by reference to one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of entity's expanded affiliated group if—

(*1*) Debt is convertible into stock of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group;

(*2*) Amounts payable as interest or upon redemption or retirement of the debt are determined primarily by reference to the value or income (including the value of or income from one or more assets) of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group; or

(*3*) The debt is primarily secured by the assets of one or more investment entities described in paragraph (e)(4)(i)(B) or (C) of this section or passive NFFEs that are members of the entity's expanded affiliated group or is guaranteed by one or more such entities.

(vii) *Cash value insurance contract*—(A) *In general.* The term *cash value insurance contract* means an insurance contract (other than an indemnity reinsurance contract between two insurance companies and a term life insurance contract described in paragraph (b)(2)(ii) of this section) that has an aggregate cash value greater than $50,000 at any time during the calendar year, applying the rules set forth in paragraph (b)(4)(iii) of this section. A participating FFI may elect to disregard the $50,000 threshold in the preceding sentence by reporting all contracts with a cash value greater than zero.

(B) *Cash value.* Except as otherwise provided in paragraph (b)(3)(vii)(C) of this section, the term *cash value* means any amount (determined without reduction for any charge or policy loan) that—

(*1*) Is payable under the contract to any person upon surrender, termination, cancellation, or withdrawal; or

(*2*) Any person can borrow under or with regard to (for example, by pledging as collateral) the contract.

(C) *Amounts excluded from cash value.* Cash value does not include an amount payable—

(*1*) Solely by reason of the death of an individual insured under a life insurance contract;

(*2*) As a personal injury or sickness benefit or a benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

(*3*) As a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an insurance contract (other than a life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract; or

(*4*) As a policyholder dividend (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are described in paragraph (b)(3)(vii)(C)(*2*) of this section.

(*5*) As a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

(D) *Policyholder dividend*—(*1*) For purposes of paragraph (b)(3)(vii)(C)(*4*) of this section and except as otherwise provided in this paragraph, a policyholder dividend means any dividend or similar distribution to policyholders in their capacity as such, including—

(*i*) An amount paid or credited (including as an increase in benefits) if the amount is not fixed in the contract but rather depends on the experience of the insurance company or the discretion of management;

(*ii*) A reduction in the premium that, but for the reduction, would have been required to be paid; and

(*iii*) An experience rated refund or credit based solely upon the claims experience of the contract or group involved.

(*2*) A policyholder dividend cannot exceed the premiums previously paid for the contract, less the sum of the cost of insurance and expense charges (whether or not actually imposed) during the contract's existence and the aggregate amount of any prior dividends paid or credited with regard to the contract.

(*3*) A policyholder dividend does not include any amount that is in the nature of interest that is paid or credited to a

contract holder to the extent that such amount exceeds the minimum rate of interest required to be credited with respect to contract values under local law.

(4) *Account balance or value.* This paragraph (b)(4) provides rules for determining the balance or value of a financial account for purposes of chapter 4. For example, the rules of this paragraph apply for purposes of determining whether an FFI meets the requirements of paragraph (f)(2)(i), (f)(2)(ii) or (f)(3) of this section to certify to a deemed-compliant FFI status. The rules of this paragraph also apply to a participating FFI's due diligence and reporting obligations to the extent required under § 1.1471–4(c) or (d) and to a U.S. withholding agent's due diligence obligations to the extent required under § 1.1471–3.

(i) *In general.* Except as otherwise provided in paragraph (b)(4)(ii) of this section with respect to immediate annuities, the balance or value of a financial account is the balance or value calculated by the financial institution for purposes of reporting to the account holder. In the case of an account described in paragraph (b)(1)(iii) of this section, the balance or value of an equity interest is the value calculated by the financial institution for the purpose that requires the most frequent determination of value, and the balance or value of a debt interest is its principal amount. Except as provided in paragraph (b)(3)(vii) of this section, the balance or value of an insurance or annuity contract is the balance or value as of either the calendar year end or the most recent contract anniversary date. The balance or value of the account is not to be reduced by any liabilities or obligations incurred by an account holder with respect to the account or any of the assets held in the account and is not to be reduced by any fees, penalties, or other charges for which the account holder may be liable upon terminating, transferring, surrendering, liquidating, or withdrawing cash from the account. Each holder of a jointly held account is attributed the entire balance or value of the joint account. See § 1.1473–1(b)(3) for rules regarding the valuation of trust interests that also apply under this paragraph (b)(4)(i) to determine the value of trust interests that are financial accounts.

(ii) *Special rule for immediate annuity*—(A) *Immediate annuities without minimum benefit guarantees.* If the value of an immediate annuity contract with no minimum benefit guarantee is not reported to the account holder, the account balance or value of the contract is the sum of the net present values on the valuation date of the amounts reasonably expected to be payable in future periods under the contract.

(B) *Immediate annuities with a minimum benefit guarantee.* The account balance or value of an annuity contract with a minimum guarantee is the sum of the net present values on the valuation date of—

(*1*) The non-guaranteed amounts reasonably expected to be payable in future periods; and

(*2*) The guaranteed amounts payable in future periods.

(C) *Net present value of amounts payable in future periods.* The net present value of an amount payable in a future period shall be determined using—

(*1*) A reasonable actuarial valuation method, and

(*2*) The mortality tables and interest rate(s)—

(*i*) Prescribed pursuant to section 7520 and the regulations thereunder; or

(*ii*) Used by the issuer of the contract to determine the amounts payable under the contract.

(iii) *Account aggregation requirements*—(A) *In general.* To the extent a financial institution is required under chapter 4 to determine the aggregate balance or value of an account, the financial institution is required to aggregate the account balance or value of all accounts that are held (in whole or in part) by the same person and that are maintained by the financial institution or members of its expanded affiliated group, but only to the extent that the financial institution's computerized systems link the accounts by reference to a data element, such as client number, EIN, or foreign tax identifying number, and allow the account balances of such accounts to be aggregated. Notwithstanding the rules set forth in this paragraph (b)(4)(iii), a financial institution is required to aggregate the balance or value of accounts that it treats as consolidated obligations.

(B) *Aggregation rule for relationship managers.* To the extent a financial institution is required under chapter 4 to apply the aggregation rules of this paragraph (b)(4)(iii), the financial institution also is required to aggregate all accounts that a relationship manager knows are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, as well as all accounts that the relationship manager has associated with one another through a relationship code, customer identification number, TIN, or similar indicator, or that the relationship manager would typically associate with each other under the procedures of the financial institution (or the department, division, or unit with which the relationship manager is associated).

(*C*) *Examples.* The following examples illustrate the account aggregation requirements of this paragraph (b)(4)(iii):

Example 1. FFI not required to aggregate accounts for U.S. account exception. A U.S. resident individual, U, holds a depository account with Branch 1 of CB, a commercial bank that is a participating FFI. The balance in U's Branch 1 account at the end of Year 1 is $35,000. U also holds a depository account with Branch 2 of CB, with a $45,000 balance at the end of Year 1. CB's retail banking businesses share computerized information management systems across its branches, but U's accounts are not associated with one another in the shared computerized information system. In addition, CB has not assigned a relationship manager to U or U's accounts. Because the accounts are not associated in CB's system or by a relationship manager, CB is not required to aggregate the accounts under paragraph (b)(4)(iii) and both accounts are eligible for the exception to U.S. account status described in paragraph (a)(4)(i) of this section as neither account exceeds the $50,000 threshold.

Example 2. FFI required to aggregate accounts for U.S. account exception. Same facts as *Example 1,* except that both of U's depository accounts are associated with U and with one another by reference to CB's internal identification number. The system shows the account balances for both accounts, and such balances may be electronically aggregated, though the system does not show a combined balance for the accounts. In determining whether such accounts meet the exception to U.S. account status described in paragraph (a)(4)(i) of this section for certain depository accounts with an aggregate balance or value of $50,000 or less, CB is required to aggregate the account balances of all depository accounts under the rules of paragraph (b)(4)(iii) of this section. Under those rules, U is treated as holding depository accounts with CB with an aggregate balance of $80,000. Accordingly, neither account is eligible for the exception to U.S. account status, because the accounts, when aggregated, exceed the $50,000 threshold.

Example 3. Aggregation rules for joint accounts maintained by a participating FFI. In Year 1, a U.S. resident individual, U, holds a custodial account that is a preexisting account at custodial institution CI, a participating FFI. The balance in U's CI custodial account at the end of Year 1 is $35,000. U also holds a joint custodial account that is a preexisting account with her sister, A, a nonresident alien for U.S. federal income tax purposes, with another custodial institution, CI2. The balance in the joint account at the end of Year 1 is also $35,000. CI and CI2 are part of the same expanded affiliated group and share computerized information management systems. Both U's custodial account at CI and U and A's custodial account at CI2 are associated with

U and with one another by reference to CI's internal identification number and the system allows the balances to be aggregated. In determining whether such accounts meet the documentation exception described in § 1.1471–4(c)(4)(iv) for certain preexisting individual accounts with an aggregate balance or value of $50,000 or less, CI is required to aggregate the account balances of accounts held in whole or in part by the same account holder under the rules of paragraph (b)(4)(iii) of this section. Under those rules, U is treated as having financial accounts with C1 and CI2, each with an aggregate balance of $70,000. Accordingly, neither account is eligible for the documentation exception.

Example 4. Aggregation for applying indefinite validity periods. In Year 1, an owner-documented FFI, O, holds an offshore account with Branch 1 of CB, a commercial bank that is a U.S. withholding agent. The balance in O's CB account at the end of Year 1 is $600,000. In Year 1, O also holds an account in the United States with Branch 2 of CB. The Branch 2 account has a $450,000 balance at the end of Year 1. CB's banking businesses share computerized information management systems across its branches. O's accounts are associated with one another in the shared computerized information system and the system allows the balances to be aggregated. In determining whether CB is permitted to apply an indefinite validity period for the documentation submitted for O's account at Branch 1 pursuant to § 1.1471–3(c)(6)(ii)(C)(*4*) (permitting indefinite validity for a withholding statement of an owner-documented FFI if the balance or value of all accounts held by the owner-documented FFI does not exceed $1,000,000), CB is required to aggregate the account balance of O's accounts at Branch 1 and Branch 2 to the extent required under the rules of paragraph (b)(4)(iii) of this section. Accordingly, O is treated as holding financial accounts with CB with an aggregate balance of $1,050,000 and the documentation submitted for O's account at Branch 1 is not eligible for the indefinite validity period described under § 1.1471–3(c)(6)(ii)(C)(*4*).

(iv) *Currency translation of balance or value.* If the balance or value of a financial account, other obligation, or the aggregate amount payable under a group life or group annuity contract described in § 1.1471–4(c)(4) is denominated in a currency other than U.S. dollars, a withholding agent must calculate the balance or value by applying a spot rate determined under § 1.988–1(d) to translate such balance or value into the U.S. dollar equivalent. For the purpose of a participating or registered deemed-compliant FFI reporting an account under § 1.1471–4(d), the spot rate must be determined as of the last day of the calendar year (or, in the case of an insurance contract or annuity contract, the most recent contract anniversary date, when applicable) for which the account is being reported or, if the account was closed during such calendar year, the date the account was closed. In the case of an FFI determining whether an account meets (or continues to meet) a preexisting account documentation exception described in § 1.1471–4(c)(3)(iii), (c)(4)(iv), or (c)(4)(v) or whether the account is an account described in paragraph (a)(4)(i) of this section, the spot rate must be determined on the date for which the FFI is determining the threshold amount as prescribed in those provisions.

(5) *Account maintained by financial institution.* A custodial account is maintained by the financial institution that holds custody over the assets in the account (including a financial institution that holds assets in street name for an account holder in such institution). A depository account is maintained by the financial institution that is obligated to make payments with respect to the account (excluding an agent of a financial institution regardless of whether such agent is a financial institution under paragraph (e)(1) of this section). Any equity or debt interest in a financial institution that constitutes a financial account under paragraph (b)(1)(iii) of this section is maintained by such financial institution. A cash value insurance contract or an annuity contract described in paragraph (b)(1)(iv) of this section is maintained by the financial institution that is obligated to make payments with respect to the contract.

(c) *U.S. owned foreign entity.* The term *U.S. owned foreign entity* means any foreign entity that has one or more substantial U.S. owners (as defined in § 1.1473–1(b)), including a foreign entity described in paragraph (c)(2) of this section. See § 1.1473–1(e) for the definition of foreign entity for purposes of chapter 4. For the requirements applicable to determining direct and indirect ownership in an entity, see § 1.1473–1(b)(2).

(d) *Definition of FFI.* The term *FFI* means, with respect to any entity that is not resident in a country that has in effect a Model 1 IGA or Model 2 IGA, any financial institution (as defined in paragraph (e) of this section) that is a foreign entity. With respect to any entity that is resident in a country that has in effect a Model 1 IGA or Model 2 IGA, an FFI is any entity that is treated as a Financial Institution pursuant to such Model 1 IGA or Model 2 IGA. A territory financial institution is not an FFI under this paragraph (d).

(e) *Definition of financial institution*—(1) *In general.* Except as otherwise provided in paragraph (e)(5) of this section, the term *financial institution* means any entity that—

(i) Accepts deposits in the ordinary course of a banking or similar business (as defined in paragraph (e)(2) of this section) (depository institution);

(ii) Holds, as a substantial portion of its business (as defined in paragraph (e)(3) of this section), financial assets for the benefit of one or more other persons (custodial institution);

(iii) Is an investment entity (as defined in paragraph (e)(4) of this section);

(iv) Is an insurance company or a holding company (as described in paragraph (e)(5)(i)(C) of this section) that is a member of an expanded affiliated group that includes an insurance company, and the insurance company or holding company issues, or is obligated to make payments with respect to, a cash value insurance or annuity contract described in paragraph (b)(1)(iv) of this section (specified insurance company); or

(v) Is an entity that is a holding company or treasury center (as described in paragraphs (e)(5)(i)(C) and (e)(5)(i)(D)(*1*) of this section) that—

(A) Is part of an expanded affiliated group that includes a depository institution, custodial institution, insurance company, or investment entity described in paragraphs (e)(4)(i)(B) and (C) of this section; or

(B) Is formed in connection with or availed of by a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets.

(2) *Banking or similar business*—(i) *In general.* Except as otherwise provided in paragraph (e)(2)(ii) of this section, an entity is considered to be engaged in a banking or similar business if, in the ordinary course of its business with customers, the entity accepts deposits or other similar investments of funds and regularly engages in one or more of the following activities—

(A) Makes personal, mortgage, industrial, or other loans or provides other extensions of credit;

(B) Purchases, sells, discounts, or negotiates accounts receivable, installment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;

(C) Issues letters of credit and negotiates drafts drawn thereunder;

(D) Provides trust or fiduciary services;

(E) Finances foreign exchange transactions; or

(F) Enters into, purchases, or disposes of finance leases or leased assets.

(ii) *Exception for certain lessors and lenders.* An entity is not considered to be engaged in a banking or similar business for purposes of this paragraph (e)(2) if the entity solely accepts deposits from persons as collateral or security pursuant to a sale or lease of property or pursuant to a similar financing arrangement between such entity and the person holding the deposit with the entity.

(iii) *Application of section 581.* Entities engaged in a banking or similar business include, but are not limited to, entities that would qualify as banks under section 585(a)(2) (including banks as defined in section 581 and any corporation to which section 581 would apply but for the fact that it is a foreign corporation).

(iv) *Effect of local regulation.* Whether an entity is subject to the banking and credit laws of a foreign country, the United States, a State, a U.S. territory, or a subdivision thereof, or is subject to supervision and examination by agencies having regulatory oversight of banking or similar institutions, is relevant to, but not necessarily determinative of, whether that entity qualifies as a financial institution under section 1471(d)(5)(A). Whether an entity conducts a banking or similar business is determined based upon the character of the actual activities of such entity.

(3) *Holding financial assets for others as a substantial portion of its business*—(i) *Substantial portion*—(A) *In general.* An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to holding financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of—

(*1*) The three-year period ending on December 31 of the year preceding the year in which the determination is made; or

(*2*) The period during which the entity has been in existence before the determination is made.

(B) *Special rule for start-up entities.* An entity with no operating history as of the date of the determination is considered to hold financial assets for the account of others as a substantial portion of its business if the entity expects to meet the gross income threshold described in paragraph (e)(3)(i)(B) of this section based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

(ii) *Income attributable to holding financial assets and related financial services.* For purposes of this paragraph (e)(3), *income attributable to holding financial assets and related financial services* means custody, account maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions; income earned from extending credit to customers with respect to financial assets held in custody (or acquired through such extension of credit); income earned on the bid-ask spread of financial assets; and fees for providing financial advice and for clearance and settlement services.

(iii) *Effect of local regulation.* Whether an entity is subject to the banking and credit, broker-dealer, fiduciary, or other similar laws and regulations of the United States, a State, a U.S. territory, a political subdivision thereof, or a foreign country, or to supervision and examination by agencies having regulatory oversight of banks, credit issuers, or other financial institutions, is relevant to, but not necessarily determinative of, whether that entity holds financial assets for the account of others as a substantial portion of its business.

(4) *Investment entity*—(i) *In general.* The term *investment entity* means any entity that is described in paragraph (e)(4)(i)(A), (B), or (C) of this section.

(A) The entity primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer—

(*1*) Trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign currency; foreign exchange, interest rate, and index instruments; transferable securities; or commodity futures;

(*2*) Individual or collective portfolio management; or

(*3*) Otherwise investing, administering, or managing funds, money, or financial assets on behalf of other persons.

(B) The entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets (as defined in paragraph (e)(4)(ii) of this section) and the entity is managed by another entity that is described in paragraph (e)(1)(i), (ii), (iv), or (e)(4)(i)(A) of this section. For purposes of this paragraph (e)(4)(i)(B), an entity is managed by another entity if the managing entity performs, either directly or through another third-party service provider, any of the activities described in paragraph (e)(4)(i)(A) of this section on behalf of the managed entity.

(C) The entity functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets.

(ii) *Financial assets.* For purposes of this paragraph, the term *financial asset* means a security (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interest, commodity (as defined in section 475(e)(2)), notional principal contract (as defined in § 1.446–3(c)), insurance contract or annuity contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, notional principal contract, insurance contract, or annuity contract.

(iii) *Primarily conducts as a business*—(A) *In general.* An entity is treated as primarily conducting as a business one or more of the activities described in paragraph (e)(4)(i)(A) of this section if the entity's gross income attributable to such activities equals or exceeds 50 percent of the entity's gross income during the shorter of—

(*1*) The three-year period ending on December 31 of the year preceding the year in which the determination is made; or

(*2*) The period during which the entity has been in existence.

(B) *Special rule for start-up entities.* An entity with no operating history as of the date of the determination is treated as primarily conducting as a business one or more of the activities described in paragraph (e)(4)(i)(A) of this section if such entity expects to meet the gross income threshold described in paragraph (e)(4)(iii)(A) of this section based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

(iv) *Primarily attributable to investing, reinvesting, or trading in financial assets*—(A) *In general.* An entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets for purposes of paragraph (e)(4)(i)(B) of this section if the entity's gross income attributable to investing, reinvesting, or trading in financial assets equals or exceeds 50 percent of the entity's gross income during the shorter of—

(*1*) The three-year period ending on December 31 of the year preceding the year in which the determination is made; or

(*2*) The period during which the entity has been in existence.

(B) *Special rule for start-up entities.* An entity with no operating history as of the date of the determination will be considered to have income that is primarily attributable to investing, reinvesting, or trading in financial assets for purposes of paragraph (e)(4)(i)(B) of this section if such entity expects to meet the income threshold described in paragraph (e)(4)(iv)(A) of this section based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

(v) *Examples.* The following examples illustrate the provisions of paragraph (e)(4) of this section:

Example 1. Investment advisor. Fund Manager is an investment entity within the meaning of paragraph (e)(4)(i)(A) of this section. Fund Manager, among its various business operations, organizes and manages a variety of funds, including Fund A, a fund that invests primarily in equities. Fund Manager hires Investment Advisor, a foreign entity, to provide advice about the financial assets in which Fund A invests. Investment Advisor earned more than 50% of its gross income for the last three years from providing services as an investment advisor. Because Investment Adviser primarily conducts as a business providing investment advice on behalf of clients, Investment Advisor is an investment entity under paragraph (e)(4)(i)(A) of this section and an FFI under paragraph (e)(1)(iii) of this section.

Example 2. Entity that is managed by an FFI. The facts are the same as in *Example 1.* In addition, in every year since it was organized, Fund A has earned more than 50% of its gross income from investing in financial assets. Accordingly, Fund A is an investment entity under paragraph (e)(4)(i)(B) of this section because it is managed by Fund Manager and Investment Advisor and its gross income is primarily attributable to investing, reinvesting, or trading in financial assets.

Example 3. Investment manager. Investment Manager, a U.S. entity, is an investment entity within the meaning of paragraph (e)(4)(i)(A) of this section. Investment Manager organizes and registers Fund A in Country A. Investment Manager is authorized to facilitate purchases and sales of financial assets held by Fund A in accordance with Fund A's investment strategy. In every year since it was organized, Fund A has earned more than 50% of its gross income from investing, reinvesting, or trading in financial assets. Accordingly, Fund A is an investment entity under paragraph (e)(4)(i)(B) of this section and an FFI under paragraph (e)(1)(iii) of this section.

Example 4. Foreign real estate investment fund that is managed by an FFI. The facts are the same as in *Example 3,* except that Fund A's assets consist solely of non-debt, direct interests in real property located within and without the United States. Fund A is not an investment entity under paragraph (e)(4)(i)(B) of this section, even though it is managed by Investment Manager, because less than 50% of its gross income is attributable to investing, reinvesting, or trading in financial assets.

Example 5. Trust managed by an individual. On January 1, 2013, X, an individual, establishes Trust A, a nongrantor foreign trust for the benefit of X's children, Y and Z. X appoints Trustee A, an individual, to act as the trustee of Trust A. Trust A's assets consists solely of financial assets, and its income consists solely of income from those financial assets. Pursuant to the terms of the trust instrument, Trustee A manages and administers the assets of the trust. Trustee A does not hire any entity as a third-party service provider to perform any of the activities described in paragraph (e)(4)(i)(A) of this section. Trust A is not an investment entity under paragraph (e)(4)(i)(B) of this section because it is managed solely by Trustee A, an individual.

Example 6. Trust managed by a trust company. The facts are the same as in *Example 5,* except that X hires Trust Company, an FFI, to act as trustee on behalf of Trust A. As trustee, Trust Company manages and administers the assets of Trust A in accordance with the terms of the trust instrument for the benefit of Y and Z. Because Trust A is managed by an FFI, Trust A is an investment entity under paragraph (e)(4)(i)(B) of this section and an FFI under paragraph (e)(1)(iii) of this section.

Example 7. Individual introducing broker. IB, an individual introducing broker, provides investing advice to her clients, and uses the services of a foreign entity to conduct and execute trades on behalf of her clients. IB has earned 50% or more of her gross income for the past three years from her services as an investment advisor. Because IB is an individual, she is not an investment entity within the meaning of paragraph (e)(4) of this section.

Example 8. Entity introducing broker. The facts are the same as in *Example 7,* except that IB is a foreign entity and not an individual. Because IB is an entity that conducts investment activities and its gross income is primarily attributable to such investment activities, IB is an investment entity under paragraph (e)(4)(i)(A) of this section and an FFI under paragraph (e)(1)(iii) of this section.

(5) *Exclusions.* A financial institution does not include an entity described in this paragraph, provided that the entity is not also described in paragraph (e)(1)(iv) of this section. For the treatment of foreign entities described in this paragraph under section 1472, see § 1.1472–1(c)(1)(vi).

(i) *Excepted nonfinancial group entities*—(A) *In general.* A foreign entity that is a member of a nonfinancial group (as defined in paragraph (e)(5)(i)(B) of this section) if—

(*1*) The entity is not a depository institution or custodial institution (other than for members of its expanded affiliated group);

(*2*) The entity is a holding company, treasury center, or captive finance company and substantially all the activities of such entity are to perform one or more of the functions described in paragraphs (e)(5)(i)(C), (D), or (E) of this section; and

(*3*) The entity does not hold itself out as (and was not formed in connection with or availed of by) an arrangement or investment vehicle that is a private equity fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy to acquire or fund companies and to treat the interests in those companies as capital assets held for investment purposes.

(B) *Nonfinancial group.* An expanded affiliated group is a *nonfinancial group* if, taking into account the application of this section,—

(*1*) For the three-year period preceding the year for which the determination is made, no more than 25 percent of the gross income of the expanded affiliated group (excluding income derived by any member that is an entity described in paragraph (e)(5)(ii) or (iii) of this section) consists of passive income (as defined in § 1.1472–1(c)(1)(v)); no more than five percent of the gross income of the expanded affiliated group is derived by members of the expanded affiliated group that are FFIs (excluding income derived from transactions between members of the expanded affiliated group or by any member of the expanded affiliated group that is a certified deemed-compliant FFI); and no more than 25 percent of the fair market value of assets held by the expanded affiliated group (excluding assets held by a member that is an entity described in paragraph (e)(5)(ii) or (iii) of this section) are assets that produce or are held for the production of passive income; and

(*2*) Any member of the expanded affiliated group that is an FFI is either a participating FFI or deemed-compliant FFI.

(C) *Holding company.* For purposes of this paragraph (e)(5)(i), an entity is a holding company if its primary activity consists of holding (directly or indirectly) all or part of the outstanding stock of one or more members of its expanded affiliated group.

(D) *Treasury center*—(*1*) Except as otherwise provided in this paragraph, an entity is a treasury center for purposes of this paragraph (e)(5)(i) if the primary activity of such entity is to enter into investment, hedging, and financing transactions with or for members of its expanded affiliated group for purposes of—

(*i*) Managing the risk of price changes or currency fluctuations with respect to

property that is held or to be held by the expanded affiliated group (or any member thereof);

(*ii*) Managing the risk of interest rate changes, price changes, or currency fluctuations with respect to borrowings made or to be made by the expanded affiliated group (or any member thereof);

(*iii*) Managing the risk of interest rate changes, price changes, or currency fluctuations with respect to assets or liabilities to be reflected in financial statements of the expanded affiliated group (or any member thereof);

(*iv*) Managing the working capital of the expanded affiliated group (or any member thereof) by investing or trading in financial assets solely for the account and risk of such entity or any member of its expanded affiliated group; or

(*v*) Acting as a financing vehicle for borrowing funds for use by the expanded affiliated group (or any member thereof).

(*2*) An entity is not a treasury center if any equity or debt interest in the entity is held by a person that is not a member of the entity's expanded affiliated group and the redemption or retirement amount or return earned on such interest is determined primarily by reference to—

(*i*) The investment, hedging, and financing activities of the treasury center with members outside of its expanded affiliated group; or

(*ii*) Any member of the group that is an investment entity described in (e)(4)(i)(B) or passive NFFE (as described in paragraph (b)(3)(vi) of this section with respect to either such entity).

(E) *Captive finance company.* For purposes of this paragraph (e)(5)(i), an entity is a captive finance company if the primary activity of such entity is to enter into financing (including the extension of credit) or leasing transactions with or for suppliers, distributors, dealers, franchisees, or customers of such entity or of any member of such entity's expanded affiliated group that is an active NFFE.

(ii) *Excepted nonfinancial start-up companies or companies entering a new line of business*—(A) *In general.* A foreign entity that is investing capital in assets with the intent to operate a new business or line of business other than that of a financial institution or passive NFFE for a period of—

(*1*) In the case of an entity intending to operate a new business, 24 months from the initial organization of such entity; and

(*2*) In the case of an entity with the intent to operate a new line of business, 24 months from the date of the board resolution (or its equivalent) approving the new line of business, provided that such entity qualified as an active NFFE for the 24 months preceding the date of such approval.

(B) *Exception for investment funds.* An entity is not described in this paragraph (e)(5)(ii) if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and hold interests in those companies as capital assets for investment purposes.

(iii) *Excepted nonfinancial entities in liquidation or bankruptcy.* A foreign entity that was not a financial institution or passive NFFE at any time during the past five years and that is in the process of liquidating its assets or reorganizing with the intent to continue or recommence operations as a nonfinancial entity.

(iv) *Excepted inter-affiliate FFI.* A foreign entity that is a member of a participating FFI group if—

(A) The entity does not maintain financial accounts (other than accounts maintained for members of its expanded affiliated group);

(B) The entity does not hold an account with or receive payments from any withholding agent other than a member of its expanded affiliated group;

(C) The entity does not make withholdable payments to any person other than to members of its expanded affiliated group that are not limited FFIs or limited branches; and

(D) The entity has not agreed to report under § 1.1471–4(d)(1)(ii) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

(v) *Section 501(c) entities.* A foreign entity that is described in section 501(c) other than an insurance company described in section 501(c)(15).

(vi) *Non-profit organizations.* A foreign entity that is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes if—

(A) The entity is exempt from income tax in its country of residence;

(B) The entity has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

(C) Neither the laws of the entity's country of residence nor the entity's formation documents permit any income or assets of the entity to be distributed to, or applied for the benefit of, an individual or noncharitable entity other than pursuant to the conduct of the entity's charitable activities, or as payment of reasonable compensation for services rendered or the use of property, or as payment representing the fair market value of property that the entity has purchased; and

(D) The laws of the entity's country of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to an entity that meets the requirements of § 1.1471–6(b) or another organization that meets the requirements of this paragraph (e)(5)(vi) or escheat to the government of the entity's country of residence or any political subdivision thereof.

(6) *Reserving activities of an insurance company.* The reserving activities of an insurance company will not cause the company to be a financial institution described in (e)(1)(i), (ii), or (iii) of this section.

(f) *Deemed-compliant FFIs.* The term *deemed-compliant FFI* includes a registered deemed-compliant FFI (as defined in paragraph (f)(1) of this section), a certified deemed-compliant FFI (as defined in paragraph (f)(2) of this section), and, to the extent provided in paragraph (f)(3) of this section, an owner-documented FFI. A deemed-compliant FFI will be treated pursuant to section 1471(b)(2) as having met the requirements of section 1471(b). A deemed-compliant FFI that complies with the due diligence and withholding requirements applicable to such entity as provided in this paragraph (f) will also be deemed to have met its withholding obligations under sections 1471(a) and 1472(a). For this purpose, an intermediary or flow-through entity that has a residual withholding obligation under § 1.1471–2(a)(2)(ii) must fulfill such obligation to be considered a deemed-compliant FFI.

(1) *Registered deemed-compliant FFIs.* A registered deemed-compliant FFI means an FFI that meets the procedural requirements described in paragraph (f)(1)(ii) of this section and that either is described in any of paragraphs (f)(1)(i)(A) through (F) of this section or is treated as a registered deemed-compliant FFI under a Model 2 IGA. A registered deemed-compliant FFI also includes any FFI, or branch of an FFI, that is a reporting Model 1 FFI that complies with the registration requirements of a Model 1 IGA.

(i) *Registered deemed-compliant FFI categories*—(A) *Local FFIs.* An FFI is described in this paragraph (f)(1)(i)(A) if the FFI meets the following requirements.

(*1*) The FFI is licensed and regulated as a financial institution under the laws of its country of incorporation or

organization (which must be a FATF-compliant jurisdiction at the time the FFI registers for deemed-compliant status).

(*2*) The FFI does not have a fixed place of business outside its country of incorporation or organization. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(*3*) The FFI does not solicit customers or account holders outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it operates a Web site, provided that the Web site does not specifically indicate that the FFI maintains accounts for or provides services to nonresidents, and does not otherwise target or solicit U.S. customers or account holders. An FFI will also not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it advertises in print media or on a radio or television station that is distributed or aired primarily within its country of incorporation or organization but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the FFI maintains accounts for or provides services to nonresidents and does not otherwise target or solicit U.S. customers or account holders.

(*4*) The FFI is required under the laws of its country of incorporation or organization to identify resident account holders for purposes of either information reporting or withholding of tax with respect to accounts held by residents or is required to identify resident accounts for purposes of satisfying such country's AML due diligence requirements.

(*5*) At least 98 percent of the accounts by value maintained by the FFI as of the last day of the preceding calendar year are held by residents (including residents that are entities) of the country in which the FFI is incorporated or organized. An FFI that is incorporated or organized in a member state of the European Union may treat account holders that are residents (including residents that are entities) of other member states of the European Union as residents of the country in which the FFI is incorporated or organized for purposes of this calculation.

(*6*) By the later of December 31, 2013, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures, consistent with those set forth for a participating FFI under § 1.1471–4(c), to monitor whether the FFI opens or maintains an account for a specified U.S. person who is not a resident of the country in which the FFI is incorporated or organized (including a U.S. person that was a resident when the account was opened but subsequently ceases to be a resident), an entity controlled or beneficially owned (as determined under the FFI's AML due diligence) by one or more specified U.S. persons that are not residents of the country in which the FFI is incorporated or organized, or a nonparticipating FFI. Such policies and procedures must provide that if any such account is discovered, the FFI will close such account, transfer such account to a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or withhold and report on such account as would be required under § 1.1471–4(b) and (d) if the FFI were a participating FFI.

(*7*) With respect to each preexisting account held by a nonresident of the country in which the FFI is organized or held by an entity, the FFI reviews those accounts in accordance with the procedures described in § 1.1471–4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI, and certifies to the IRS that it did not identify any such account as a result of its review, that it has closed any such accounts that were identified or transferred them to a participating FFI, reporting Model 1 FFI, or U.S. financial institution, or that it agrees to withhold and report on such accounts as would be required under § 1.1471–4(b) and (d) if it were a participating FFI.

(*8*) In the case of an FFI that is a member of an expanded affiliated group, each FFI in the group is incorporated or organized in the same country and, with the exception of any member that is a retirement plan described in § 1.1471–6(f), meets the requirements set forth in this paragraph (f)(1)(i)(A) and the procedural requirements of paragraph (f)(1)(ii) of this section.

(*9*) The FFI does not have policies or practices that discriminate against opening or maintaining accounts for individuals who are specified U.S. persons and who are residents of the FFI's country of incorporation or organization.

(B) *Nonreporting members of participating FFI groups.* An FFI that is a member of a participating FFI group is described in this paragraph (f)(1)(i)(B) if it meets the following requirements.

(*1*) By the later of December 31, 2013, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that within six months of opening a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI, the FFI either transfers such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(*2*) The FFI reviews its accounts that were opened prior to the time it implements the policies and procedures (including time frames) described in paragraph (f)(1)(i)(B)(*1*) of this section, using the procedures described in § 1.1471–4(c) applicable to preexisting accounts of participating FFIs, to identify any U.S. account or account held by a nonparticipating FFI. Within six months of the identification of any account described in this paragraph, the FFI transfers the account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(*3*) By the later of December 31, 2013, or the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI implements policies and procedures to ensure that it identifies any account that becomes a U.S. account or an account held by a recalcitrant account holder or a nonparticipating FFI due to a change in circumstances. Within six months of the date on which the FFI first has knowledge or reason to know of the change in the account holder's chapter 4 status, the FFI transfers any such account to an affiliate that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution, closes the account, or becomes a participating FFI.

(C) *Qualified collective investment vehicles.* An FFI is described in this paragraph (f)(1)(i)(C) if it meets the following requirements.

(*1*) The FFI is an FFI solely because it is an investment entity, and it is regulated as an investment fund either in its country of incorporation or organization or in all of the countries in which it is registered and all of the countries in which it operates. A fund will be considered to be regulated as an investment fund under this paragraph if its manager is regulated with respect to the investment fund in all of the countries in which the investment fund is registered and in all of the countries in which the investment fund operates.

(*2*) Each holder of record of direct debt interests in the FFI in excess of $50,000, direct equity interests in the FFI (for example the holders of its units or global certificates), and any other account holder of the FFI is a

participating FFI, registered deemed-compliant FFI, retirement plan described in § 1.1471–6(f), non-profit organization described in paragraph (e)(5)(vi) of this section, U.S. person that is not a specified U.S. person, nonreporting IGA FFI, or exempt beneficial owner. Notwithstanding the prior sentence, an FFI will not be prohibited from qualifying as a qualified collective investment vehicle solely because it has issued interests in bearer form provided that the FFI ceased issuing interests in such form after December 31, 2012, retires all such interests upon surrender, and establishes policies and procedures to redeem or immobilize all such interests prior to January 1, 2017, and that prior to payment the FFI documents the account holder in accordance with the procedures set forth in § 1.1471–4(c) applicable to accounts other than preexisting accounts and agrees to withhold and report on such accounts as would be required under § 1.1471–4(b) and (d) if it were a participating FFI. For purposes of this paragraph (f)(1)(i)(C), an FFI may disregard equity interests owned by specified U.S. persons acquired with seed capital within the meaning of paragraph (i)(4) of this section if the specified U.S. person is described in paragraph (i)(3)(i) and (ii) of this section (substituting the term ''U.S. person'' for ''FFI'' and ''member''), and the specified U.S. person neither has held, nor intends to hold, such interest for more than three years.

(*3*) In the case of an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group are participating FFIs, registered deemed-compliant FFIs, sponsored FFIs described in paragraph (f)(1)(i)(F)(*1*) or (*2*) of this section, nonreporting IGA FFIs, or exempt beneficial owners.

(D) *Restricted funds.* An FFI is described in this paragraph (f)(1)(i)(D) if it meets the following requirements.

(*1*) The FFI is an FFI solely because it is an investment entity, and it is regulated as an investment fund under the laws of its country of incorporation or organization (which must be a FATF-compliant jurisdiction at the time the FFI registers for deemed-compliant status) or in all of the countries in which it is registered and in all of the countries in which it operates. A fund will be considered to be regulated as an investment fund for purposes of this paragraph if its manager is regulated with respect to the fund in all of the countries in which the investment fund is registered and in all of the countries in which the investment fund operates.

(*2*) Interests issued directly by the fund are redeemed by or transferred by the fund rather than sold by investors on any secondary market. Notwithstanding the prior sentence, an FFI will not be prohibited from qualifying as a restricted fund solely because it issued interests in bearer form provided that the FFI ceased issuing interests in bearer form after December 31, 2012, retires all such interests upon surrender, and establishes policies and procedures to redeem or immobilize all such interests prior to January 1, 2017, and that prior to payment the FFI documents the account holder in accordance with the procedures set forth in § 1.1471–4(c) applicable to accounts other than preexisting accounts and agrees to withhold and report on such accounts as would be required under § 1.1471–4(b) and (d) if it were a participating FFI. For purposes of this paragraph (f)(1)(i)(D), interests in the FFI that are issued by the fund through a transfer agent or distributor that does not hold the interests as a nominee of the account holder will be considered to have been issued directly by the fund.

(*3*) Interests that are not issued directly by the fund are sold only through distributors that are participating FFIs, registered deemed-compliant FFIs, nonregistering local banks described in paragraph (f)(2)(i) of this section, or restricted distributors described in paragraph (f)(4) of this section. For purposes of this paragraph (f)(1)(i)(D) and paragraph (f)(4) of this section, a distributor means an underwriter, broker, dealer, or other person who participates, pursuant to a contractual arrangement with the FFI, in the distribution of securities and holds interests in the FFI as a nominee.

(*4*) The FFI ensures that by the later of June 30, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, each agreement that governs the distribution of its debt or equity interests prohibits sales and other transfers of debt or equity interests in the FFI (other than interests that are both distributed by and held through a participating FFI) to specified U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners. In addition, by that date, the FFI's prospectus and all marketing materials must indicate that sales and other transfers of interests in the FFI to specified U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners are prohibited unless such interests are both distributed by and held through a participating FFI.

(*5*) The FFI ensures that by the later of June 30, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, each agreement entered into by the FFI that governs the distribution of its debt or equity interests requires the distributor to notify the FFI of a change in the distributor's chapter 4 status within 90 days of the change. The FFI must certify to the IRS that, with respect to any distributor that ceases to qualify as a distributor identified in paragraph (f)(1)(i)(D)(*3*) of this section, the FFI will terminate its distribution agreement with the distributor, or cause the distribution agreement to be terminated, within 90 days of notification of the distributor's change in status and, with respect to all debt and equity interests of the FFI issued through that distributor, will redeem those interests, convert those interests to direct holdings in the fund, or cause those interests to be transferred to another distributor identified in paragraph (f)(1)(i)(D)(*3*) of this section within six months of the distributor's change in status.

(*6*) With respect to any of the FFI's preexisting direct accounts that are held by the beneficial owner of the interest in the FFI, the FFI reviews those accounts in accordance with the procedures (and time frames) described in § 1.1471–4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI. Notwithstanding the previous sentence, the FFI will not be required to review the account of any individual investor that purchased its interest at a time when all of the FFI's distribution agreements and its prospectus contained an explicit prohibition of the issuance and/or sale of shares to U.S. entities and U.S. resident individuals. An FFI will not be required to review the account of any investor that purchased its interest in bearer form until the time of payment, but at such time will be required to document the account in accordance with procedures set forth in § 1.1471–4(c) applicable to accounts other than preexisting accounts. By the later of June 30, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, the FFI will be required to certify to the IRS either that it did not identify any U.S. account or account held by a nonparticipating FFI as a result of its review or, if any such accounts were identified, that the FFI will either redeem such accounts, transfer such accounts to an affiliate or other FFI that is a participating FFI, reporting Model 1 FFI, or U.S. financial

institution, or withhold and report on such accounts as would be required under § 1.1471–4(b) and (d) if it were a participating FFI.

(*7*) By the later of December 31, 2013, or the date that it registers as a deemed-compliant FFI, the FFI implements the policies and procedures described in § 1.1471–4(c) to ensure that it either—

(*i*) Does not open or maintain an account for, or make a withholdable payment to, any specified U.S. person, nonparticipating FFI, or passive NFFE with one or more substantial U.S. owners and, if it discovers any such accounts, closes all accounts for any such person within six months of the date that the FFI had reason to know the account holder became such a person; or

(*ii*) Withholds and reports on any account held by, or any withholdable payment made to, any specified U.S. person, nonparticipating FFI, or passive NFFE with one or more substantial U.S. owners to the extent and in the manner that would be required under § 1.1471–4(b) and (d) if the FFI were a participating FFI.

(*8*) For an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group are participating FFIs, registered deemed-compliant FFIs, sponsored FFIs described in paragraph (f)(2)(iii)(B) or (C) of this section, nonreporting IGA FFIs, or exempt beneficial owners.

(E) *Qualified credit card issuers.* An FFI is described in this paragraph (f)(1)(i)(E) if the FFI meets the following requirements.

(*1*) The FFI is an FFI solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer.

(*2*) By the later of December 31, 2013, or the date it registers as a deemed-compliant FFI, the FFI implements policies and procedures to either prevent a customer deposit in excess of $50,000 or to ensure that any customer deposit in excess of $50,000 is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

(F) *Sponsored investment entities and controlled foreign corporations.* An FFI is described in this paragraph (f)(1)(i)(F) if the FFI is described in paragraph (f)(1)(i)(F)(*1*) or (*2*) of this section and the sponsoring entity meets the requirements of paragraph (f)(1)(i)(F)(*3*) of this section.

(*1*) An FFI is a sponsored investment entity described in this paragraph (f)(1)(i)(F)(*1*) if—

(*i*) It is an investment entity that is not a QI, WP, or WT; and

(*ii*) An entity has agreed with the FFI to act as a sponsoring entity for the FFI.

(*2*) An FFI is a sponsored controlled foreign corporation described in this paragraph (f)(1)(i)(F)(*2*) if the FFI meets the following requirements—

(*i*) The FFI is a controlled foreign corporation as defined in section 957(a) that is not a QI, WP, or WT;

(*ii*) The FFI is wholly owned, directly or indirectly, by a U.S. financial institution that agrees with the FFI to act as a sponsoring entity for the FFI; and

(*iii*) The FFI shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all account holders and payees of the FFI and to access all account and customer information maintained by the FFI including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the account holder or payee.

(*3*) A sponsoring entity described in paragraph (f)(1)(i)(F)(*1*)(*ii*) or (f)(1)(i)(F)(*2*)(*ii*) of this section meets the requirements of this paragraph (f)(1)(i)(F)(*3*) if the sponsoring entity—

(*i*) Is authorized to manage the FFI and enter into contracts on behalf of the FFI (such as a fund manager, trustee, corporate director, or managing partner);

(*ii*) Has registered with the IRS as a sponsoring entity;

(*iii*) Has registered the FFI with the IRS;

(*iv*) Agrees to perform, on behalf of the FFI, all due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI;

(*v*) Identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§ 1.1471–4(d)(2)(ii)(C) and 1.1474–1; and

(*vi*) Has not had its status as a sponsor revoked.

(*4*) The IRS may revoke a sponsoring entity's status as a sponsor with respect to all sponsored FFIs if there is a material failure by the sponsoring entity to comply with its obligations under paragraph (f)(1)(i)(F)(*3*) of this section with respect to any sponsored FFI.

(*5*) A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(1)(i)(F)(*3*) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI.

(ii) *Procedural requirements for registered deemed-compliant FFIs.* A registered deemed-compliant FFI described in paragraph (f)(1)(i)(A) through (E) of this section may use one or more agents to perform the necessary due diligence to identify its account holders and to take any required action associated with obtaining and maintaining its deemed-compliant status. The FFI, however, remains responsible for ensuring that the requirements for its deemed-compliant status are met. Unless otherwise provided in this section, a registered deemed-compliant FFI described in paragraph (f)(1)(i)(A) through (E) of this section is required to—

(A) Register with the IRS pursuant to procedures prescribed by the IRS and agree to comply with the terms of its registered deemed-compliant status.

(B) Have its responsible officer certify every three years to the IRS, either individually or collectively for the FFI's expanded affiliated group, that all of the requirements for the deemed-compliant category claimed by the FFI have been satisfied since the later of the date the FFI registers as a deemed-compliant FFI or December 31, 2013;

(C) Maintain in its records the confirmation from the IRS of the FFI's registration as a deemed-compliant FFI and GIIN or such other information as the IRS specifies in forms or other guidance; and

(D) Agree to notify the IRS if there is a change in circumstances that would make the FFI ineligible for the deemed-compliant status for which it has registered, and to do so within six months of the change in circumstances unless the FFI is able to resume its eligibility for its registered-deemed compliant status within the six month notification period.

(iii) *Deemed-compliant FFI that is merged or acquired.* A deemed-compliant FFI that becomes a participating FFI or a member of a participating FFI group as a result of a merger or acquisition will not be required to redetermine the chapter 4 status of any account maintained by the FFI prior to the date of the merger or acquisition unless that account has a subsequent change in circumstances.

(2) *Certified deemed-compliant FFIs.* A certified deemed-compliant FFI means an FFI described in any of paragraphs (f)(2)(i) through (iv) of this section that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation described in § 1.1471–3(d)(6) applicable to the relevant deemed-compliant category. An FFI that is described in paragraph (f)(2)(iv) of this section (a limited life debt investment entity) will be treated as a

certified deemed-compliant FFI prior to January 1, 2017. A certified deemed-compliant FFI also includes any nonreporting IGA FFI. A certified deemed-compliant FFI is not required to register with the IRS.

(i) *Nonregistering local bank.* An FFI is described in this paragraph (f)(2)(i) if the FFI meets the following requirements.

(A) The FFI operates solely as (and is licensed and regulated under the laws of its country of incorporation or organization as)—

(*1*) A bank; or

(*2*) A credit union or similar cooperative credit organization that is operated without profit.

(B) The FFI's business consists primarily of receiving deposits from and making loans to unrelated retail customers.

(C) The FFI does not have a fixed place of business outside its country of incorporation or organization. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(D) The FFI does not solicit customers or account holders outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it operates a Web site, provided that the Web site does not permit account opening, does not indicate that the FFI maintains accounts for or provides services to nonresidents, and does not otherwise target or solicit U.S. customers or account holders. An FFI will also not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it advertises in print media or on a radio or television station that is distributed or aired primarily within its country of incorporation or organization but is also incidentally distributed or aired in other countries, provided that the advertisement does not indicate that the FFI maintains accounts for or provides services to nonresidents and does not otherwise target or solicit U.S. customers or account holders.

(E) The FFI does not have more than $175 million in assets on its balance sheet and, if the FFI is a member of an expanded affiliated group, the group does not have more than $500 million in total assets on its consolidated or combined balance sheets.

(F) With respect to an FFI that is part of an expanded affiliated group, each member of the expanded affiliated group is incorporated or organized in the same country and does not have a fixed place of business outside of that country. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions. Further, each FFI in the group, other than an FFI described in paragraph (f)(2)(ii) of this section or § 1.1471–6(f), meets the requirements set forth in this paragraph (f)(2)(i). For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(ii) *FFIs with only low-value accounts.* An FFI is described in this paragraph (f)(2)(ii) if the FFI meets the following requirements:

(A) The FFI is not an investment entity.

(B) No financial account maintained by the FFI (or, in the case of an FFI that is a member of an expanded affiliated group, by any member of the expanded affiliated group) has a balance or value in excess of $50,000. The balance or value of a financial account shall be determined by applying the rules described in paragraph (b)(4) of this section, substituting the term *financial account* for the term *depository account* and the term *person* for the term *individual.*

(C) The FFI does not have more than $50 million in assets on its balance sheet as of the end of its most recent accounting year. In the case of an FFI that is a member of an expanded affiliated group, the entire expanded affiliated group does not have more than $50 million in assets on its consolidated or combined balance sheet as of the end of its most recent accounting year.

(iii) *Sponsored, closely held investment vehicles.* Subject to the provisions of paragraph (f)(2)(iii)(F) of this section, an FFI is described in this paragraph (f)(2)(iii) if it meets the requirements described in paragraphs (f)(2)(iii)(A) through (E) of this section.

(A) The FFI is an FFI solely because it is an investment entity and is not a QI, WP, or WT.

(B) The FFI has a contractual arrangement with a sponsoring entity that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution and that is authorized to manage the FFI and enter into contracts on behalf of the FFI (such as a professional manager, trustee, or managing partner), under which the sponsoring entity agrees to fulfill all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI.

(C) The FFI does not hold itself out as an investment vehicle for unrelated parties.

(D) Twenty or fewer individuals own all of the debt and equity interests in the FFI (disregarding debt interests owned by participating FFIs, registered deemed-compliant FFIs, and certified deemed-compliant FFIs and equity interests owned by an entity if that entity owns 100 percent of the equity interests in the FFI and is itself a sponsored FFI under this paragraph (f)(2)(iii)).

(E) The sponsoring entity complies with the following requirements—

(*1*) The sponsoring entity has registered with the IRS as a sponsoring entity;

(*2*) The sponsoring entity agrees to perform, on behalf of the FFI, all due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI and retains documentation collected with respect to the FFI for a period of six years;

(*3*) The sponsoring entity identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§ 1.1471–4(d)(2)(ii)(C) and 1.1474–1; and

(*4*) The sponsoring entity has not had its status as a sponsor revoked.

(F) The IRS may revoke a sponsoring entity's status as a sponsor with respect to all sponsored FFIs if there is a material failure by the sponsoring entity to comply with its obligations under paragraph (f)(2)(iii)(E) of this section with respect to any sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(2)(iii)(E) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI.

(iv) *Limited life debt investment entities (transitional).* An FFI is described in this paragraph (f)(2)(iv) if the FFI is the beneficial owner of the payment (or of payments made with respect to the account) and the FFI meets the following requirements. An FFI that meets the requirements of this paragraph (f)(2)(iv) will be treated as a certified deemed-compliant FFI prior to January 1, 2017.

(A) The FFI is a collective investment vehicle formed pursuant to a trust indenture or similar fiduciary arrangement that is an FFI solely because it is an investment entity that offers interests primarily to unrelated investors.

(B) The FFI was in existence as of December 31, 2011, and the FFI's organizational documents require that the entity liquidate on or prior to a set

date, and do not permit amendments to the organizational documents, including the trust indenture, without the agreement of all of the FFI's investors.

(C) The FFI was formed for the purpose of purchasing (and did in fact purchase) specific types of indebtedness and holding those assets (subject to reinvestment only under prescribed circumstances) until the termination of the asset or the vehicle.

(D) All payments made to the investors of the FFI are cleared through a clearing organization that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution or made through a trustee that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution.

(E) The FFI's trust indenture or similar fiduciary arrangement only authorizes the trustee or fiduciary to engage in activities specifically designated in the trust indenture, and the trustee or fiduciary is not authorized through a fiduciary duty or otherwise to fulfill the obligations that a participating FFI is subject to under § 1.1471–4 absent a legal requirement to fulfill them, even if the consequence of the trustee failing to fulfill these obligations is to cause the FFI to be withheld upon. Further, no other person has the authority to fulfill the obligations that a participating FFI is subject to under § 1.1471–4 on behalf of the FFI.

(3) *Owner-documented FFIs*—(i) *In general.* An owner-documented FFI means an FFI that meets the requirements of paragraph (f)(3)(ii) of this section. An FFI may only be treated as an owner-documented FFI with respect to payments received from and accounts held with a designated withholding agent (or with respect to payments received from and accounts held with another FFI that is also treated as an owner-documented FFI by such designated withholding agent). A designated withholding agent is a U.S. financial institution, participating FFI, or reporting Model 1 FFI that agrees to undertake the additional due diligence and reporting required under paragraphs (f)(3)(ii)(D) and (E) of this section in order to treat the FFI as an owner-documented FFI. An FFI meeting the requirements of this paragraph (f)(3) will only be treated as a deemed-compliant FFI with respect to a payment or account for which it does not act as an intermediary.

(ii) *Requirements of owner-documented FFI status.* An FFI meets the requirements of this paragraph (f)(3)(ii) only if—

(A) The FFI is an FFI solely because it is an investment entity;

(B) The FFI is not owned by or in an expanded affiliated group with any FFI that is a depository institution, custodial institution, or specified insurance company;

(C) The FFI does not maintain a financial account for any nonparticipating FFI;

(D) The FFI provides the designated withholding agent with all of the documentation described in § 1.1471–3(d)(6) and agrees to notify the withholding agent if there is a change in circumstances; and

(E) The designated withholding agent agrees to report to the IRS (or, in the case of a reporting Model 1 FFI, to the relevant foreign government or agency thereof) all of the information described in § 1.1471–4(d) or § 1.1474–1(i) (as appropriate) with respect to any specified U.S. persons that are identified in § 1.1471–3(d)(6)(iv)(A)(*1*). Notwithstanding the previous sentence, the designated withholding agent is not required to report information with respect to an indirect owner of the FFI that holds its interest through a participating FFI, a deemed-compliant FFI (other than an owner-documented FFI), an entity that is a U.S. person, an exempt beneficial owner, or an excepted NFFE.

(4) *Definition of a restricted distributor.* An entity is a restricted distributor for purposes of paragraph (f)(1)(i)(D) of this section (relating to registered deemed-compliant restricted funds) if it operates as a distributor that holds debt or equity interests in a restricted fund as a nominee and meets the following requirements.

(i) The distributor provides investment services to at least 30 unrelated customers and less than half of the distributor's customers are related persons.

(ii) The distributor is required to perform AML due diligence procedures under the anti-money laundering laws of its country of incorporation or organization (which must be a FATF-compliant jurisdiction).

(iii) The distributor operates solely in its country of incorporation or organization, does not have a fixed place of business outside that country, and, if such distributor belongs to an expanded affiliated group, has the same country of incorporation or organization as all other members of its expanded affiliated group. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions.

(iv) The distributor does not solicit customers or account holders outside its country of incorporation or organization. For this purpose, a distributor will not be considered to have solicited customers or account holders outside its country of organization merely because it operates a Web site, provided that the Web site does not permit account opening by persons identified as nonresidents, does not specifically state that nonresidents may acquire securities from the distributor, and does not otherwise target U.S. customers or account holders. A distributor will also not be considered to have solicited customers or account holders outside its country of incorporation or organization merely because it advertises in print media or on a radio or television station that is distributed or aired primarily within its country of incorporation or organization but is also incidentally distributed or aired in other countries, provided that the advertisement does not indicate that the distributor maintains accounts for or provides services to nonresidents and does not otherwise target or solicit U.S. customers or account holders.

(v) The distributor does not have more than $175 million in total assets under management and has no more than $7 million in gross revenue on its income statement for the most recent financial accounting year and, if the distributor belongs to an expanded affiliated group, the entire group does not have more than $500 million in total assets under management or more than $20 million in gross revenue for its most recent financial accounting year on a combined or consolidated income statement.

(vi) The distributor provides the restricted fund (or another distributor of the restricted fund that is a participating FFI or registered deemed-compliant FFI, and with which the distributor has entered into its distribution agreement) with a valid Form W–8 indicating that the distributor satisfies the requirements to be a restricted distributor.

(vii) The agreement governing the distributor's distribution of debt or equity interests of the restricted fund—

(A) Prohibits the distributor from distributing any securities to specified U.S. persons, passive NFFEs that have one or more substantial U.S. owners, and nonparticipating FFIs;

(B) Requires that if the distributor does distribute securities to any of the persons described in this paragraph (f)(4)(vii), it will cause the restricted fund to redeem or retire those interests, or it will transfer those interests to a distributor that is a participating FFI or reporting Model 1 FFI, within six months and the commission paid to the distributor will be forfeited to the restricted fund or to the participating

FFI to which those interests are transferred; and

(C) Requires the distributor to notify the restricted fund (or another distributor of the restricted fund that is a participating FFI, reporting Model 1 FFI, or registered deemed-compliant FFI and with which the distributor has entered into its distribution agreement) of a change in the distributor's chapter 4 status within 90 days of the change in status.

(viii) With respect to sales after December 31, 2011, and prior to the time the restrictions described in paragraph (f)(4)(vii) of this section were incorporated into the distribution agreement, either the agreement governing the distributor's distribution of debt or equity interests of the relevant FFI contained a prohibition of the sale of such securities to U.S. entities or U.S. resident individuals, or the distributor reviews all accounts relating to such sales in accordance with the procedures (and time frames) described in § 1.1471–4(c) applicable to preexisting accounts and certifies that it has caused the restricted fund to redeem or retire, or it has transferred all securities sold to any of the persons described in paragraph (f)(4)(vii) of this section. If the distribution agreement addressed in the prior sentence contained only a prohibition on the sale of securities to U.S. resident individuals, the distributor will not be required to review the individual accounts relating to such sales but must review and make certifications with respect to all entity accounts in the manner described in the previous sentence.

(g) *Recalcitrant account holders*—(1) *Scope.* This paragraph (g) provides rules for determining when an account holder of a participating FFI or registered deemed-compliant FFI is a recalcitrant account holder. Paragraph (g)(2) of this section defines the term recalcitrant account holder. Paragraphs (g)(3) and (4) of this section provide timing rules for when an account holder will begin to be treated as a recalcitrant account holder by a participating FFI and when an account holder will cease to be treated as a recalcitrant account holder by such institution. For rules for determining the holder of an account, see paragraph (a)(3) of this section. For the withholding requirements of an FFI with respect to its recalcitrant account holders, see paragraph (f) of this section and § 1.1471–4(b). For the reporting requirements of an FFI with respect to its recalcitrant account holders, see § 1.1471–4(d)(6), and, for the reporting required with respect to payments made to such account holders, see § 1.1474–1(d)(4)(iii). The rules provided in this paragraph (g) to classify certain account holders as recalcitrant account holders shall not, however, apply to a U.S. branch of a participating FFI. Instead, a U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person shall apply the presumption rules of § 1.1471–3(f) (for foreign entity account holders) and chapter 3 or 61 (for individual payees) to determine the status of a payee if it cannot reliably associate a reportable payment made to the payee with valid documentation.

(2) *Recalcitrant account holder.* The term *recalcitrant account holder* means any holder of an account maintained by an FFI if such account holder is not an FFI (or presumed to be an FFI under § 1.1471–3(f)), the account does not meet the requirements of the exception to U.S. account status described in paragraph (a)(4) of this section (for depository accounts with a balance of $50,000 or less) and does not qualify for any of the exceptions from the documentation requirements described in § 1.1471–4(c)(3)(iii), (c)(4)(iii), (c)(5)(iii), (c)(5)(iv)(E) (or the participating FFI elects to forego such exceptions) and—

(i) The account holder fails to comply with requests by the FFI for the documentation or information that is required under § 1.1471–4(c) for determining the status of such account as a U.S. account or other than a U.S. account;

(ii) The account holder fails to provide a valid Form W–9 upon request from the FFI or fails to provide a correct name and TIN combination upon request from the FFI when the FFI has received notice from the IRS indicating that the name and TIN combination reported by the FFI for the account holder is incorrect;

(iii) If foreign law would (but for a waiver) prevent reporting by the FFI (or branch or division thereof) of the information described in § 1.1471–4(d)(3) or (5) with respect to such account, the account holder (or substantial U.S. owner of an account holder that is a U.S. owned foreign entity) fails to provide a valid and effective waiver to permit such reporting; or

(iv) The account holder provides the documentation described in § 1.1471–3(d)(12) to establish its status as a passive NFFE (other than a WP or WT) but fails to provide the information regarding its owners required under § 1.1471–3(d)(12)(iii).

(3) *Start of recalcitrant account holder status*—(i) *Preexisting accounts identified under the procedures described in § 1.1471–4(c) for identifying U. S. accounts*—(A) *In general.* An account holder of a preexisting account described in paragraph (g)(2) of this section maintained by a participating FFI will be treated as a recalcitrant account holder beginning on the dates provided in paragraphs (g)(3)(B) through (D) of this section. An account holder of a preexisting account described in paragraph (g)(2) of this section that is maintained by a registered deemed-compliant FFI will be treated as a recalcitrant account holder beginning on the dates provided in paragraph (f) of this section (setting forth the time by which the FFI must identify its accounts in accordance with the requirements of § 1.1471–4(c) in order to meet the requirements of its applicable registered deemed-compliant status).

(B) *Accounts other than high-value accounts.* Account holders of preexisting accounts maintained by a participating FFI that are not high-value accounts (as described in § 1.1471–4(c)(8)) and that are described in paragraph (g)(2) of this section will be treated as recalcitrant account holders beginning on the date that is two years after the effective date of the FFI agreement.

(C) *High-value accounts.* Account holders of preexisting accounts maintained by a participating FFI that are high-value accounts (as described in § 1.1471–4(c)(5)(iv)(D)) and that are described in paragraph (g)(2) of this section will be treated as recalcitrant account holders beginning on the date that is one year after the effective date of the FFI agreement.

(D) *Preexisting accounts that become high-value accounts.* With respect to a calendar year beginning after the later of the effective date of the FFI agreement and December 31, 2014, an account holder that is described in paragraph (g)(2) of this section and that holds a preexisting account that a participating FFI identifies as a high-value account pursuant to § 1.1471–4(c)(5)(iv)(D) will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment is made to the account following the calendar year end in which the account is identified as a high-value account or the date that is six months after the calendar year end.

(ii) *Accounts that are not preexisting accounts and accounts requiring name/TIN correction.* An account holder of an account that is not a preexisting account and that is described in paragraph (g)(2) of this section will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment or a foreign passthru payment

is made to the account or 90 days after the date the account is opened by the participating FFI. An account holder for which the participating FFI received a notice from the IRS indicating that the name and TIN combination provided for the account holder is incorrect will be treated as a recalcitrant account holder following the date of such notice within the time prescribed in § 31.3406(d)–5(a) of this chapter.

(iii) *Accounts with changes in circumstances.* An account holder holding an account that is described in paragraph (g)(2) of this section following a change in circumstances (other than a change in account balance or value in a subsequent year that causes an individual account to be identified as a high-value account) will be treated as a recalcitrant account holder beginning on the earlier of the date a withholdable payment or a foreign passthru payment is made to the account or the date that is 90 days after the change in circumstances. For the definition of a change in circumstances with respect to an account, see § 1.1471–4(c)(2)(iii).

(4) *End of recalcitrant account holder status.* An account holder that is treated as a recalcitrant account holder under paragraphs (g)(2) and (3) of this section will cease to be so treated as of the date on which the account holder is no longer described in paragraph (g)(2) of this section.

(h) *Passthru payment*—(1) *Defined.* The term *passthru payment* means any withholdable payment and any foreign passthru payment.

(2) *Foreign passthru payment.* [Reserved].

(i) *Expanded affiliated group*—(1) *Scope of paragraph.* This paragraph (i) defines the term *expanded affiliated group* for purposes of chapter 4. For the requirements of a participating FFI with respect to members of its expanded affiliated group that are FFIs, see § 1.1471–4(e).

(2) *Expanded affiliated group defined*—(i) *In general.* Except as otherwise provided in this paragraph (i), an *expanded affiliated group* means an affiliated group as defined in section 1504(a), determined—

(A) By substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears;

(B) Without regard to paragraphs (2) and (3) of section 1504(b);

(C) Without application of section 1504(a)(3); and

(D Without application of § 1.1504–4(b)(2)(i)(A).

(ii) *Partnerships and entities other than corporations.* A partnership or any entity other than a corporation shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3), without regard to whether such entity is foreign or domestic) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(3) *Exception for FFIs holding certain capital investments.* Notwithstanding paragraph (i)(2) of this section, an investment entity will not be considered a member of an expanded affiliated group as a result of a contribution of seed capital by a member of such expanded affiliated group if—

(i) The member that owns the investment entity is an FFI that is in the business of providing seed capital to form investment entities, the interests in which it intends to sell to unrelated investors;

(ii) The investment entity is created in the ordinary course of such other FFI's business described in paragraph (i)(3)(i) of this section;

(iii) As of the date the FFI acquired the equity interest, any equity interest in the investment entity in excess of 50 percent of the total value of the stock of the investment entity is intended to be held by such other FFI (including ownership by other members of such other FFI's expanded affiliated group) for no more than three years from the date on which such other FFI first acquired an equity interest in the investment entity; and

(iv) In the case of an equity interest that has been held by such other FFI for over three years from the date referenced in paragraph (i)(3)(iii) of this section, the aggregate value of the equity interest held by such other FFI and the equity interests held by other members of its expanded affiliated group is 50 percent or less of the total value of the stock of the investment entity.

(4) *Seed capital.* For purposes of this paragraph (i), the term *seed capital* means an initial capital contribution made to an investment entity that is intended as a temporary investment and is deemed by the manager of the entity to be necessary or appropriate for the establishment of the entity, such as for the purpose of establishing a track record of investment performance for such entity, achieving economies of scale for diversified investment, avoiding an artificially high expense to return ratio, or similar purposes.

(5) *Anti-abuse rule.* A change in ownership, voting rights, or the form of an entity that results in an entity meeting or not meeting the ownership requirements described in paragraph (i)(2) of this section will be disregarded for purposes of determining whether an entity is a member of an expanded affiliated group if the change is pursuant to a plan a principal purpose of which is to avoid reporting or withholding that would otherwise be required under any chapter 4 provision. For purposes of this paragraph (i)(5), a change in voting rights includes a separation of voting rights and value.

(j) *Effective/applicability date.* This section generally applies on January 28, 2013. For other dates of applicability, see § 1.1471–5(f)(2)(iv).

■ **Par. 10.** Section 1.1471–6 is added to read as follows:

§ 1.1471–6 Payments beneficially owned by exempt beneficial owners.

(a) *In general.* This section describes classes of beneficial owners that are identified in section 1471(f) (exempt beneficial owners). Except as otherwise provided in paragraphs (d) (regarding securities held by foreign central banks of issue) and (f) (regarding retirement funds) of this section, a person must be a beneficial owner of a payment to be treated as an exempt beneficial owner with respect to the payment. The following classes of persons are exempt beneficial owners: any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing described in paragraph (b) of this section; any international organization or any wholly owned agency or instrumentality thereof described in paragraph (c) of this section; any foreign central bank of issue described in paragraph (d) of this section; any government of a U.S. territory described in paragraph (e) of this section; certain foreign retirement funds described in paragraph (f) of this section; and certain entities described in paragraph (g) of this section that are wholly owned by one or more other exempt beneficial owners. In addition, an exempt beneficial owner includes any person treated as an exempt beneficial owner pursuant to a Model 1 IGA or Model 2 IGA. See §§ 1.1471–2(a)(4)(v) and 1.1472–1(c)(2) for the exemptions from withholding for payments beneficially owned by an exempt beneficial owner; § 1.1471–3(d)(9) for the documentation requirements applicable to a withholding agent for purposes of determining when a withholdable payment is beneficially owned by an exempt beneficial owner; and § 1.1471–3(d)(8)(ii) for when a withholding agent may treat a payment made to a nonparticipating FFI as beneficially owned by an exempt beneficial owner.

(b) *Any foreign government, any political subdivision of a foreign*

government, or any wholly owned agency or instrumentality of any one or more of the foregoing. Solely for purposes of this section and except as provided in paragraph (h) of this section, the term *any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing* means only the integral parts, controlled entities, and political subdivisions of a foreign sovereign.

(1) *Integral part.* Solely for purposes of this paragraph (b), an *integral part* of a foreign sovereign is any person, body of persons, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a foreign country. The net earnings of the governing authority must be credited to its own account or to other accounts of the foreign sovereign, with no portion inuring to the benefit of any private person as defined in paragraph (b)(3) of this section. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity. All the facts and circumstances will be taken into account in determining whether an individual is acting in a private or personal capacity.

(2) *Controlled entity.* Solely for purposes of this paragraph (b), a *controlled entity* means an entity that is separate in form from a foreign sovereign or that otherwise constitutes a separate juridical entity, provided that—

(i) The entity is wholly owned and controlled by one or more foreign sovereigns directly or indirectly through one or more controlled entities;

(ii) The entity's net earnings are credited to its own account or to other accounts of one or more foreign sovereigns, with no portion of its income inuring to the benefit of any private person as defined in paragraph (b)(3) of this section; and

(iii) The entity's assets vest in one or more foreign sovereigns upon dissolution.

(3) *Inurement to the benefit of private persons.* Solely for purposes of this paragraph (b)—

(i) Income does not inure to the benefit of private persons if such persons (within the meaning of section 7701(a)(1)) are the intended beneficiaries of a governmental program carried on by a foreign sovereign, and the program activities constitute governmental functions under the regulations under section 892.

(ii) Income is considered to inure to the benefit of private persons if such income benefits—

(A) Private persons through the use of a governmental entity as a conduit for personal investment;

(B) Private persons through the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons; or

(C) Private persons who divert such income from its intended use by exerting influence or control through means explicitly or implicitly approved of by the foreign sovereign.

(c) *Any international organization or any wholly owned agency or instrumentality thereof.* Except as provided in paragraph (h) of this section, the term *any international organization or any wholly owned agency or instrumentality thereof* means any entity described in section 7701(a)(18). The term also includes any intergovernmental or supranational organization—

(1) That is comprised primarily of foreign governments;

(2) That is recognized as an intergovernmental or supranational organization under a foreign law similar to 22 U.S.C. 288–288f or that has in effect a headquarters agreement with a foreign government; and

(3) Whose income does not inure to the benefit of private persons under the principles of paragraph (b)(3)(ii) of this section, as applied to the intergovernmental or supranational organization in place of the government or governmental entity.

(d) *Foreign central bank of issue*—(1) *In general.* Solely for purposes of this section and except as provided in paragraph (h) of this section, the term *foreign central bank of issue* means a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such a bank is generally the custodian of the banking reserves of the country under whose law it is organized.

(2) *Separate instrumentality.* A foreign central bank of issue may include an instrumentality that is separate from a foreign government, whether or not owned in whole or in part by a foreign government. For example, foreign banks organized along the lines of, and performing functions similar to, the Federal Reserve System qualify as foreign central banks of issue for purposes of this section.

(3) *Bank for International Settlements.* The Bank for International Settlements is a foreign central bank of issue for purposes of this section.

(4) *Income on certain collateral.* Solely for purposes of determining whether an entity is an exempt beneficial owner of a payment under this paragraph (d), a foreign central bank of issue is a beneficial owner with respect to income earned on securities, including securities held as collateral or in connection with a securities lending transaction, held by the foreign central bank of issue in the normal course of its operations as a central bank of issue.

(e) *Governments of U.S. territories.* Except as provided in paragraph (h) of this section, whether a person or entity constitutes a government of a U.S. territory for purposes of this section is determined by applying principles analogous to those set forth in paragraph (b) of this section.

(f) *Certain retirement funds.* A fund is described in this paragraph (f) if it is described in paragraphs (f)(1) through (6) of this section. In addition, if a withholding agent may treat a withholdable payment as made to a payee that is a retirement fund in accordance with § 1.1471–3, then the withholding agent may also treat such retirement fund as the beneficial owner of the payment. See § 1.1471–3(d)(9)(ii).

(1) *Treaty-qualified retirement fund.* A fund established in a country with which the United States has an income tax treaty in force, provided that the fund is entitled to benefits under such treaty on income that it derives from sources within the United States (or would be entitled to such benefits if it derived any such income) as a resident of the other country that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits;

(2) *Broad participation retirement fund.* A fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund—

(i) Does not have a single beneficiary with a right to more than five percent of the fund's assets;

(ii) Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates; and

(iii) Satisfies one or more of the following requirements—

(A) The fund is generally exempt from tax on investment income under the laws of the country in which it is

established or operates due to its status as a retirement or pension plan;

(B) The fund receives at least 50 percent of its total contributions (other than transfers of assets from accounts described in § 1.1471–5(b)(2)(i)(A) (referring to retirement and pension accounts) or from other plans described in this paragraph (f)) from the sponsoring employers;

(C) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to accounts described in § 1.1471–5(b)(2)(i)(A) (referring to retirement and pension accounts) or other retirement funds described in this paragraph (f)), or penalties apply to distributions or withdrawals made before such specified events; or

(D) Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed $50,000 annually.

(3) *Narrow participation retirement funds.* A fund established to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for prior services rendered, provided that—

(i) The fund has fewer than 50 participants;

(ii) The fund is sponsored by one or more employers that are not investment entities or passive NFFEs;

(iii) Employee and employer contributions to the fund (other than transfers of assets from other funds described in paragraph (f)(1) of this section or accounts described in § 1.1471–5(b)(2)(i)(A) (referring to retirement and pension accounts)) are limited by reference to earned income and compensation of the employee, respectively;

(iv) Participants that are not residents of the country in which the fund is established or operated are not entitled to more than 20 percent of the fund's assets; and

(v) The fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates.

(4) *Fund formed pursuant to a plan similar to a section 401(a) plan.* A fund formed pursuant to a pension plan that would meet the requirements of section 401(a), other than the requirement that the plan be funded by a trust created or organized in the United States.

(5) *Investment vehicles exclusively for retirement funds.* A fund established exclusively to earn income for the benefit of one or more retirement funds described in paragraphs (f)(1) through (5) of this section or accounts described in § 1.1471–5(b)(2)(i)(A) (referring to retirement and pension accounts).

(6) *Pension fund of an exempt beneficial owner.* A fund established and sponsored by an exempt beneficial owner described in paragraph (b), (c), (d), or (e) of this section to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, but the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

(7) Example. FP, a foreign pension fund established in Country X, is generally exempt from income taxation in Country X, and is operated principally to provide retirement benefits in such country. The U.S.-Country X income tax treaty is identical in all material respects to the 2006 U.S. model income tax convention. FP is a resident of Country X under Article 4(2)(a) and a qualified person under Article 22(2)(d) of the U.S.-Country X income tax treaty. Therefore, FP is a pension fund described in paragraph (f)(1) of this section.

(g) *Entities wholly owned by exempt beneficial owners.* A person is described in this paragraph (g) if it is an FFI solely because it is an investment entity, each direct holder of an equity interest in the investment company is an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section, and each direct holder of a debt interest in the investment entity is either a depository institution (with respect to a loan made to such entity) or an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section.

(h) *Exception for commercial activities*—(1) *General rule.* An exempt beneficial owner described in paragraph (b), (c), (d), or (e) of this section will not be treated as an exempt beneficial owner with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by an insurance company, custodial institution, or depository institution (including the accepting of deposits). Thus, for example, a central bank of issue that conducts a commercial financial activity, such as acting as an intermediary on behalf of persons other than in the bank's capacity as a central bank of issue, is not an exempt beneficial owner under paragraph (d)(1) of this section with respect to payments received in connection with an account held in connection with such activity.

(2) *Limitation.* Paragraph (h)(1) of this section will not apply if—

(i) An entity undertakes commercial financial activity described in paragraph (h)(1) of this section solely for or at the direction of other exempt beneficial owners and such commercial financial activity is consistent with the purposes of the entity;

(ii) The entity has no outstanding debt that would be a financial account under § 1.1471–5(b)(1)(iii); and

(iii) The entity otherwise maintains financial accounts only for exempt beneficial owners.

(i) *Effective/applicability date.* This section applies January 28, 2013.

■ **Par. 11.** Section 1.1472–1 is added to read as follows:

§ 1.1472–1 Withholding on NFFEs.

(a) *In general.* This section provides rules that a withholding agent must apply to determine its obligations to withhold under section 1472 on withholdable payments made to a payee that is an NFFE. A participating FFI that complies with its withholding obligations under § 1.1471–4(b) will be deemed to satisfy its obligations under section 1472 with respect to withholdable payments made to NFFEs that are account holders. The rules of this section will apply, however, in the case of a participating FFI acting as a withholding agent with respect to a payment made to an NFFE that is not an account holder (for example, a payment with respect to a contract that does not constitute a financial account). See § 1.1473–1(a)(4)(vi), however, for rules excepting from the definition of withholdable payment certain payments of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation.

(b) *Withholdable payments made to an NFFE*—(1) *In general.* Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief) or paragraph (c) of this section (providing exceptions for payments to an excepted NFFE, a WP or WT, or an exempt beneficial owner), a withholding agent must withhold 30 percent of any withholdable payment made after December 31, 2013, to a payee that is an NFFE unless—

(i) The beneficial owner of such payment is the NFFE or any other NFFE;

(ii) The withholding agent can, pursuant to paragraph (d) of this section, treat the beneficial owner of the payment as an NFFE that does not have any substantial U.S. owners, or as an

NFFE that has identified its substantial U.S. owners; and

(iii) The withholding agent reports the information described in § 1.1474–1(i)(2) relating to any substantial U.S. owners of the beneficial owner of such payment.

(2) *Transitional relief.* For any withholdable payment made prior to January 1, 2015, with respect to a preexisting obligation to a payee that is not a prima facie FFI and for which a withholding agent does not have documentation indicating the payee's status as a passive NFFE with one or more substantial U.S. owners, the withholding agent is not required to withhold under this section or report under § 1.1474–1(i)(2) (describing the reporting obligations of withholding agents with respect to NFFEs).

(c) *Exceptions*—(1) *Beneficial owner that is an excepted NFFE.* A withholding agent is not required to withhold under section 1472(a) and paragraph (b) of this section on a withholdable payment (or portion thereof) if the withholding agent can treat the payment as beneficially owned by an excepted NFFE. An *excepted NFFE* means an NFFE that is—

(i) *Publicly traded corporation.* A corporation the stock of which is regularly traded on one or more established securities markets for the calendar year.

(A) *Regularly traded.* For purposes of this section, stock of a corporation is *regularly traded* on one or more established securities markets for a calendar year if—

(*1*) One or more classes of stock of the corporation that, in the aggregate, represent more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the prior calendar year; and

(*2*) With respect to each class relied on to meet the more-than-50-percent listing requirement of paragraph (c)(1)(i)(A)(*1*) of this section—

(*i*) Trades in each such class are effected, other than in de minimis quantities, on such market or markets on at least 60 days during the prior calendar year; and

(*ii*) The aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least 10 percent of the average number of shares outstanding in that class during the prior calendar year.

(B) *Special rules regarding the regularly traded requirement*—(*1*) *Year of initial public offering.* For the calendar year in which a corporation initiates a public offering of a class of stock for trading on one or more established securities markets, as defined in paragraph (c)(1)(i)(C) of this section, such class of stock meets the requirements of this paragraph (c)(1)(i) for such year if the stock is regularly traded in more than de minimis quantities on ⅙ of the days remaining after the date of the offering in the quarter during which the offering occurs, and on at least 15 days during each remaining quarter of the calendar year. If a corporation initiates a public offering of a class of stock in the fourth quarter of the calendar year, such class of stock meets the requirements of this paragraph (c)(1)(i) in the calendar year of the offering if the stock is regularly traded on such established securities market, other than in de minimis quantities, on the greater of ⅙ of the days remaining after the date of the offering in the quarter during which the offering occurs, or 5 days.

(*2*) *Classes of stock treated as meeting the regularly traded requirement.* A class of stock meets the trading requirements of this paragraph (c)(1)(i) for a calendar year if the stock is traded during such year on an established securities market located in the United States and is regularly quoted by dealers making a market in the stock. A dealer makes a market in a stock only if the dealer regularly and actively offers to, and in fact does, purchase the stock from, and sell the stock to, customers who are not related persons (as defined in section 954(d)(3)) with respect to the dealer in the ordinary course of a trade or business.

(*3*) *Anti-abuse rule.* Any trade conducted with a principal purpose of meeting the regularly traded requirements of this paragraph (c)(1)(i) shall be disregarded. Further, a class of stock shall not be treated as regularly traded if there is a pattern of trades conducted to meet the requirements of this paragraph (c)(1)(i). Similarly, paragraph (c)(1)(i)(B)(*1*) of this section shall not apply to a public offering of stock that has as one of its principal purposes qualification of the class of stock as regularly traded under the reduced regularly traded requirements for the calendar year of an initial public offering. For purposes of applying the immediately preceding sentence, consideration will be given to whether the regularly traded requirements of this paragraph (c)(1)(i) are satisfied in the calendar year immediately following the initial public offering.

(C) *Established securities market*—(*1*) *In general.* For purposes of this paragraph (c)(1)(i), the term *established securities market* means, for any calendar year—

(*i*) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the foreign country in which the market is located, and has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding $1 billion during each of the three calendar years immediately preceding the calendar year in which the determination is being made;

(*ii*) A national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 USC 78f) with the Securities and Exchange Commission;

(*iii*) Any exchange designated under a Limitation on Benefits article of an income tax treaty with the United States that is in force; or

(*iv*) Any other exchange that the Secretary may designate in published guidance.

(*2*) *Foreign exchange with multiple tiers.* If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(*3*) *Computation of dollar value of stock traded.* For purposes of paragraph (c)(1)(i)(C)(*1*)(*i*) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the World Federation of Exchanges located in Paris (or a successor institution), or, if not so reported, by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(ii) *Certain affiliated entities related to a publicly traded corporation.* Any corporation that is a member of the same expanded affiliated group (as defined in § 1.1471–5(i)) as a corporation described in paragraph (c)(1)(i) of this section.

(iii) *Certain territory entities.* Any territory entity that is directly or indirectly wholly owned by one or more bona fide residents of the U.S. territory under the laws of which the entity is organized. The term *bona fide resident of a U.S. territory* means an individual who qualifies as a bona fide resident under section 937(a) and § 1.937–1.

(iv) *Active NFFEs.* Any entity (an *active NFFE*) if less than 50 percent of its gross income for the preceding calendar year is passive income and less than 50 percent of the weighted average percentage of assets (tested quarterly) held by it are assets that produce or are

held for the production of passive income, as determined after the application of paragraph (c)(1)(iv)(B) of this section (passive assets).

(A) *Passive income.* Except as provided in paragraph (c)(1)(iv)(B) of this section, the term *passive income* means the portion of gross income that consists of—

(*1*) Dividends, including substitute dividend amounts;

(*2*) Interest;

(*3*) Income equivalent to interest, including substitute interest and amounts received from or with respect to a pool of insurance contracts if the amounts received depend in whole or part upon the performance of the pool;

(*4*) Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFFE;

(*5*) Annuities;

(*6*) The excess of gains over losses from the sale or exchange of property that gives rise to passive income described in paragraphs (c)(1)(iv)(A)(*1*) through (*5*) of this section;

(*7*) The excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodities, but not including—

(*i*) Any commodity hedging transaction described in section 954(c)(5)(A), determined by treating the entity as a controlled foreign corporation; or

(*ii*) Active business gains or losses from the sale of commodities, but only if substantially all the foreign entity's commodities are property described in paragraph (1), (2), or (8) of section 1221(a);

(*8*) The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transaction;

(*9*) Net income from notional principal contracts as defined in § 1.446–3(c)(1);

(*10*) Amounts received under cash value insurance contracts; or

(*11*) Amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts.

(B) *Exceptions from passive income treatment.* Notwithstanding paragraph (c)(1)(iv)(A) of this section, the term *passive income* does not include—

(*1*) Any income from interest, dividends, rents, or royalties that is received or accrued from a related person to the extent such amount is properly allocable to income of such related person that is not passive income. For purposes of this paragraph (c)(1)(iv)(B)(*1*), the term ''related person'' has the meaning given such term by section 954(d)(3) determined by substituting ''foreign entity'' for ''controlled foreign corporation'' each place it appears in section 954(d)(3); or

(*2*) In the case of a foreign entity that regularly acts as a dealer in property described in paragraph (c)(1)(iv)(A)(*6*) of this section (referring to the sale or exchange of property that gives rise to passive income), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities)—

(*i*) Any item of income or gain (other than any dividends or interest) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer; and

(*ii*) If such dealer is a dealer in securities (within the meaning of section 475(c)(2)), any income from any transaction entered into in the ordinary course of such trade or business as a dealer in securities.

(C) *Methods of measuring assets.* For purposes of this paragraph (c)(1)(iv), the value of an NFFE's assets is determined based on the fair market value or book value of the assets that is reflected on the NFFE's balance sheet.

(v) *Excepted nonfinancial entities.* Any entity described in § 1.1471–5(e)(5) (referring to holding companies, treasury centers, and captive finance companies that are members of a nonfinancial group; start-up companies; entities that are liquidating or emerging from bankruptcy; and non-profit organizations).

(2) *Payments made to a WP, WT, or an exempt beneficial owner.* A withholding agent is not required to withhold on a withholdable payment (or portion thereof) under section 1472(a) and paragraph (b) of this section if the withholding agent may—

(i) Treat the payee as an NFFE that is a WP or WT; or

(ii) Treat the payment as made to an exempt beneficial owner.

(d) *Rules for determining payee and beneficial owner*—(1) *In general.* For purposes of this section, except in the case of a payee that is a WP or WT, a withholding agent may treat a withholdable payment as beneficially owned by the payee as determined under § 1.1471–3. Thus, a withholding agent may treat a withholdable payment as beneficially owned by an excepted NFFE if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status as an excepted NFFE under the rules of § 1.1471–3(d).

(2) *Payments made to an NFFE that is a WP or WT.* A withholding agent may treat the payee of a withholdable payment as an NFFE that is a WP or WT if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status as such under the rules of § 1.1471–3(b)(3) and (d).

(3) *Payments made to a partner or beneficiary of an NFFE that is an NWP or NWT.* A withholding agent may treat a partner or beneficiary of an NFFE that is an NWP or NWT, respectively, as the payee of a withholdable payment under this section if the withholding agent can reliably associate the payment with a valid Form W–8 or written notification that the NFFE is a flow-through entity as described in § 1.1471–3(c)(2), including valid documentation sufficient to establish the chapter 4 status of each payee of the payment that is a partner or beneficiary, respectively, by applying the rules described in § 1.1471–3(d).

(4) *Payments made to a beneficial owner that is an NFFE.* A withholding agent may treat the beneficial owner of a withholdable payment as an NFFE that does not have any substantial U.S. owners or that has identified all of its substantial U.S. owners if it can reliably associate the payment with valid documentation identifying the beneficial owner as an NFFE that does not have any substantial U.S. owners or that has identified all of its substantial U.S. owners by applying the rules described in § 1.1471–3(d).

(5) *Absence of valid documentation.* A withholding agent that cannot reliably associate the payment with documentation as described in any of paragraphs (d)(2) through (4) of this section must treat the payment as made to a payee in accordance with the presumption rules under § 1.1471–3(f).

(e) *Information reporting requirements*—(1) *Reporting on withholdable payments.* A withholding agent that treats a withholdable payment as made to any payee described in paragraph (d) of this section must provide information about such payee on Form 1042–S and file a withholding income tax return on Form 1042 to the extent required under § 1.1474–1(d) and (c), respectively.

(2) *Reporting on substantial U.S. owners.* A withholding agent that receives information about any substantial U.S. owners of an NFFE that is not an excepted NFFE must report information about the NFFE's substantial U.S. owners in accordance with § 1.1474–1(i)(2). See § 1.1471–4(d) for the reporting requirements of a participating FFI with respect to the

substantial U.S. owners of account holders that are NFFEs.

(f) *Effective/applicability date.* This section generally applies January 28, 2013. For other dates of applicability, see § 1.1472–1(b).

■ **Par. 12.** Section 1.1473–1 is added to read as follows:

§ 1.1473–1 Section 1473 definitions.

(a) *Definition of withholdable payment*—(1) *In general.* Except as otherwise provided in this paragraph (a) and § 1.1471–2(b) (regarding grandfathered obligations), the term *withholdable payment* means—

(i) Any payment of U.S. source FDAP income (as defined in paragraph (a)(2) of this section); and

(ii) For any sales or other dispositions occurring after December 31, 2016, any gross proceeds from the sale or other disposition (as defined in paragraph (a)(3)(i) of this section) of any property of a type that can produce interest or dividends that are U.S. source FDAP income.

(2) *U.S. source FDAP income defined*—(i) *In general*—(A) *FDAP income defined.* For purposes of chapter 4, the term *FDAP income* means fixed or determinable annual or periodic income that is described in § 1.1441–2(b)(1) or § 1.1441–2(c) (excluding income described in paragraph (a)(2)(vi) of this section or § 1.1441–2(b)(2) (such as gains derived from the sale of certain property)) and including the types of income enumerated in paragraphs (a)(2)(iii) through (v) of this section.

(B) *U.S. source.* The term *U.S. source* means derived from sources within the United States. A payment is derived from sources within the United States if it is income treated as derived from sources within the United States under sections 861 through 865 and other relevant provisions of the Code. In the case of a payment of FDAP income for which the source cannot be determined at the time of payment, see § 1.1471–2(a)(5).

(C) *Exceptions to withholding on U.S. source FDAP income not applicable under chapter 4.* Except as otherwise provided in paragraph (a)(4) of this section, no exception to withholding on U.S. source FDAP income for purposes other than chapter 4 applies for purposes of determining whether a payment of such income is a withholdable payment under chapter 4. Thus, for example, an exclusion from an amount subject to withholding under § 1.1441–2(a) or an exclusion from taxation under section 881 does not apply for purposes of determining whether such income constitutes a withholdable payment.

(ii) *Special rule for certain interest.* Interest that is described in section 861(a)(1)(A) (relating to interest paid by foreign branches of domestic corporations and partnerships) is treated as U.S. source FDAP income.

(iii) *Original issue discount.* The rules described in § 1.1441–2(b)(3)(ii) for determining when an amount representing original issue discount is subject to withholding for chapter 3 purposes apply for purposes of determining when original issue discount from sources within the United States is U.S. source FDAP income.

(iv) *REMIC residual interests.* U.S. source FDAP income includes an amount described in § 1.1441–2(b)(5).

(v) *Withholding liability of payee that is satisfied by withholding agent.* If a withholding agent satisfies a withholding liability arising under chapter 4 with respect to a withholdable payment from the withholding agent's own funds, the satisfaction of such liability is treated as an additional payment of U.S. source FDAP income to the payee to the extent that the withholding agent's satisfaction of such withholding liability also satisfies a tax liability of the payee under section 881 or 871 with respect to the same payment, and the satisfaction of the tax liability constitutes additional income to the payee under § 1.1441–3(f) that is U.S. source FDAP income. In such case, the amount of any additional payment treated as made by the withholding agent for purposes of this paragraph (a)(2)(v) and any tax liability resulting from such payment shall be determined under § 1.1441–3(f). See § 1.1474–6 regarding the coordination of the withholding requirements under chapters 3 and 4 in the case of a withholdable payment that is also subject to withholding under chapter 3.

(vi) *Special rule for sales of interest bearing debt obligations.* Income that is otherwise described as U.S. source FDAP income in paragraphs (a)(2)(i) through (v) of this section does not include an amount of interest accrued on the date of a sale or exchange of an interest bearing debt obligation if the sale occurs between two interest payment dates.

(vii) *Payment of U.S. source FDAP income*—(A) *Amount of payment of U.S. source FDAP income.* The amount of U.S. source FDAP income is the gross amount of the payment of such income, unreduced by any deductions or offsets. The rules of § 1.1441–3(b)(1) shall apply to determine the amount of an interest payment on an interest-bearing obligation. In the case of a corporate distribution, the distributing corporation or intermediary shall determine the portion of the distribution that is treated as U.S. source FDAP income under this paragraph (a)(2) in the same manner as the distributing corporation or intermediary determines the portion of the distribution subject to withholding under § 1.1441–3(c). Any portion of a payment on a debt instrument or a corporate distribution that does not constitute U.S. source FDAP income under this paragraph (a)(2) solely because of a provision other than the source rules of sections 861 through 865 shall be taken into account as gross proceeds under paragraph (a)(3) of this section. For rules regarding the determination of the amount of a payment of U.S. source FDAP income under paragraph (a)(2) of this section made in a medium other than U.S. dollars, see § 1.1441–3(e). For determining the amount of a payment of a dividend equivalent, see section 871(m) and the regulations thereunder.

(B) *When payment of U.S. source FDAP income is made.* A payment is considered made when the amount would be includible in the income of the beneficial owner under the U.S. tax principles governing the cash method of accounting. If an FFI acts as an intermediary with respect to a payment of U.S. source FDAP income, the FFI will be treated as making a payment of such U.S. source FDAP income to the person with respect to which the FFI acts as an intermediary when it pays or credits such amount to such person. The following rules also apply for purposes of this paragraph (a)(2)(vii)(B): §§ 1.1441–2(e)(2) (regarding when a payment is considered made in the case of income allocated under section 482); 1.1441–2(e)(3) (regarding blocked income); 1.1441–2(e)(4) (regarding when a dividend is considered paid); and 1.1441–2(e)(5) (regarding when interest is considered paid if a foreign person has made an election under § 1.884–4(c)(1)).

(3) *Gross proceeds defined*—(i) *Sale or other disposition*—(A) *In general.* Except as otherwise provided in this paragraph (a)(3)(i), the term *sale or other disposition* means any sale, exchange, or disposition of property described in paragraph (a)(3)(ii) of this section that requires recognition of gain or loss under section 1001(c), determined without regard to whether the owner of such property is subject to U.S. federal income tax with respect to such sale, exchange, or disposition. The term sale or other disposition includes (but is not limited to) sales of securities; redemptions of stock; retirements and redemptions of indebtedness; entering into short sales; and a closing transaction under a forward contract,

option, or other instrument that is otherwise a sale. Such term further includes a distribution from a corporation to the extent the distribution is a return of capital or a capital gain to the beneficial owner of the payment. Such term does not include grants or purchases of options, exercises of call options for physical delivery, transfers of securities for which gain or loss is excluded from recognition under section 1058, or mere executions of contracts that require delivery of personal property or an interest therein. For purposes of this section only, a constructive sale under section 1259 or a mark to fair market value under section 475 or 1296 is not a sale or disposition.

(B) *Special rule for sales effected by brokers.* In the case of a sale effected by a broker (with the term *effect* defined in § 1.6045–1(a)(10)), a sale means a sale as defined in § 1.6045–1(a)(9) with respect to property described in paragraph (a)(3)(ii) of this section.

(C) *Special rule for gross proceeds from sales settled by a clearing organization.* In the case of a clearing organization that settles sales and purchases of securities between members of such organization on a net basis, the gross proceeds from sales or dispositions are limited to the net amount paid or credited to a member's account that is associated with sales or other dispositions of property described in paragraph (a)(3)(ii) of this section by such member as of the time that such transactions are settled under the settlement procedures of such organization.

(ii) *Property of a type that can produce interest or dividend payments that would be U.S. source FDAP income*—(A) *In general.* Property is of a type that can produce interest or dividends payments that would be U.S. source FDAP income if the property is of a type that ordinarily gives rise to the payment of interest or dividends that would constitute U.S. source FDAP income, regardless of whether any such payment is made during the period such property is held by the person selling or disposing of such property. Thus, for example, stock issued by a domestic corporation is property of a type that can produce dividends from sources within the United States if a dividend from such corporation would be from sources within the United States, regardless of whether the stock pays dividends at regular intervals and regardless of whether the issuer has any plans to pay dividends or has ever paid a dividend with respect to the stock.

(B) *Contracts producing dividend equivalent payments.* In the case of any contract that results in the payment of a dividend equivalent as defined in section 871(m) and the regulations thereunder (including as part of a termination payment), such contract shall be treated as property that is described in paragraph (a)(3)(ii)(A) of this section, without regard to whether the taxpayer is a foreign person subject to U.S. federal income tax with respect to such transaction. To the extent that the proceeds from a termination payment include the payment of a dividend equivalent, the gross amount of such proceeds will not include the amount of such dividend equivalent.

(C) *Regulated investment company distributions.* The amount of a distribution that is designated as a capital gain dividend under section 852(b)(3)(C) or 871(k)(2) is a payment of gross proceeds to the extent attributable to property described in paragraph (a)(3)(ii)(A) of this section.

(iii) *Payment of gross proceeds*—(A) *When gross proceeds are paid.* With respect to a sale that is effected by a broker that results in a payment of gross proceeds as defined in this paragraph (a)(3), the date the gross proceeds are considered paid is the date that the proceeds of such sale are credited to the account of or otherwise made available to the person entitled to the payment. If gross proceeds are paid to a financial institution or other entity acting as an intermediary for the person selling or otherwise disposing of the property, the gross proceeds are considered paid to such person on the date that the proceeds are credited to the account of or otherwise made available to such institution.

(B) *Amount of gross proceeds.* Except as otherwise provided in this paragraph (a)(3)—

(*1*) The amount of gross proceeds from a sale or other disposition means the total amount realized as a result of a sale or other disposition of property described in paragraph (a)(3)(ii) under section 1001(b);

(*2*) In the case of a sale effected by a broker, the amount of gross proceeds from a sale or other disposition means the total amount paid or credited to the account of the person entitled to the payment increased by any amount not so paid by reason of the repayment of margin loans. The broker may (but is not required to) take commissions with respect to the sale into account in determining the amount of gross proceeds;

(*3*) In the case of a corporate distribution, the amount treated as gross proceeds excludes the amount described in paragraph (a)(2)(vii)(A) of this section that is treated as U.S. source FDAP income;

(*4*) In the case of a sale of an obligation described in paragraph (a)(2)(vi), gross proceeds includes any interest accrued between interest payment dates; and

(*5*) In the case of a sale, retirement, or redemption of a debt obligation, gross proceeds excludes the amount of original issue discount treated as U.S. source FDAP income under paragraph (a)(2)(iii) of this section.

(4) *Payments not treated as withholdable payments.* The following payments are not withholdable payments under paragraph (a)(1) of this section—

(i) *Certain short-term obligations.* A payment of interest or original issue discount on short-term obligations described in section 871(g)(1)(B)(i).

(ii) *Effectively connected income.* Any payment to the extent it gives rise to an item of income that is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year. An item of income is taken into account under section 871(b)(1) or 882(a)(1) when the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and is includible in the beneficial owner's gross income for the taxable year. An amount of income shall not be treated as taken into account under section 871(b)(1) or 882(a)(1) if the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and the beneficial owner claims an exception from tax under an income tax treaty because the income is not attributable to a permanent establishment in the United States.

(iii) *Excluded nonfinancial payments.* Payments for the following: services (including wages and other forms of employee compensation (such as stock options)), the use of property, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, and interest on outstanding accounts payable arising from the acquisition of goods or services. Notwithstanding the preceding sentence and except as otherwise provided in § 1.1471–2(b) (regarding grandfathered obligations), withholdable payments include: payments in connection with a lending transaction (including loans of securities), a forward, futures, option, or notional principal contract, or a similar financial instrument; premiums for insurance contracts or annuity contracts; amounts paid under cash value insurance or annuity contracts; dividends; interest (including substitute

interest described in § 1.861–2(a)(7)) other than interest described in the preceding sentence; investment advisory fees; custodial fees; and bank or brokerage fees.

(iv) *Gross proceeds from sales of excluded property.* Gross proceeds from the sale or other disposition of any property that can produce U.S. source FDAP income if all such U.S. source FDAP income would be excluded from the definition of withholdable payment under paragraphs (a)(4)(i) through (iii) of this section.

(v) *Fractional shares.* Payments arising in sales described in § 1.6045–1(c)(3)(ix).

(vi) *Offshore payments of U.S. source FDAP income prior to 2017 (transitional).* A payment of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation if such payment is made by a person that is not acting as an intermediary with respect to the payment. The exception for offshore payments of U.S. source FDAP income provided in the preceding sentence shall not apply, however, in the case of a flow-through entity that has a residual withholding requirement with respect to its partners, owners, or beneficiaries under § 1.1471–2(a)(2)(ii). For purposes of this paragraph (a)(4)(vi), an intermediary includes a person that acts as a qualified securities lender as defined for purposes of chapter 3.

(5) *Special payment rules for flow-through entities, complex trusts, and estates*—(i) *In general.* This paragraph (a)(5) provides special rules for a flow-through entity, complex trust, or estate to determine when such entity must treat U.S. source FDAP income as having been paid by such entity to its partners, owners, or beneficiaries (as applicable depending on the type of entity).

(ii) *Partnerships.* An amount of U.S. source FDAP income is treated as being paid to a partner under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(i)(A).

(iii) *Simple trusts.* An amount of U.S. source FDAP income is treated as being paid to a beneficiary of a simple trust under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(ii).

(iv) *Complex trusts and estates.* An amount of U.S. source FDAP income is treated as paid to a beneficiary of a complex trust or estate under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(iii).

(v) *Grantor trusts.* If an amount of U.S. source FDAP income is paid to a grantor trust, a person treated as an owner of all or a portion of such trust is treated as having been paid such income by the trust at the time it is received by or credited to the trust or portion thereof.

(vi) *Special rule for an NWP or NWT.* In the case of a partnership, simple trust, or complex trust that is an NWP or NWT, the rules described in paragraphs (a)(5)(ii) and (iii) of this section shall not apply, and U.S. source FDAP income is treated as paid to the partner or beneficiary at the time the income is paid to the partnership or trust, respectively.

(vii) *Special rule for determining when gross proceeds are treated as paid to a partner, owner, or beneficiary of a flow-through entity.* [Reserved].

(6) *Reporting of withholdable payments.* See § 1.1474–1(c) and (d) for a description of the income tax return and information reporting requirements applicable to a withholding agent that has made a withholdable payment.

(7) Example. Satisfaction of payee's chapter 4 liability by withholding agent. Recalcitrant account holder (RA) is entitled to receive a payment of $100 of U.S. source interest from withholding agent, WA. The payment is subject to withholding under chapter 4, but is not subject to withholding under section 1442, and RA has no substantive tax liability under section 881 with respect to this payment. WA pays the full $100 to RA and, after the date of payment, pays the $30 of tax due under chapter 4 to the IRS from its own funds. Because no underlying tax liability of RA is satisfied, and further because WA and RA did not execute any agreement for WA to pay this tax and WA did not have an obligation to pay this tax apart from the requirements of chapter 4, WA's payment of the tax does not give rise to a deemed payment of U.S. source FDAP income to RA under paragraph (a)(2)(v) of this section. Thus, WA is not required to pay any additional tax with respect to this payment for purposes of chapter 4.

(b) *Substantial U.S. owner*—(1) *Definition.* Except as otherwise provided in paragraph (b)(4) or (5) of this section, the term *substantial United States owner* (or *substantial U.S. owner*) means:

(i) With respect to any foreign corporation, any specified U.S. person that owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value);

(ii) With respect to any foreign partnership, any specified U.S. person that owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership; and

(iii) In the case of a trust—

(A) Any specified U.S. person treated as an owner of any portion of the trust under sections 671 through 679; and

(B) Any specified U.S. person that holds, directly or indirectly, more than 10 percent of the beneficial interests of the trust.

(2) *Indirect ownership of foreign entities.* For purposes of determining a person's interest in a foreign entity, the following rules shall apply.

(i) *Indirect ownership of stock.* Stock of a foreign corporation that is owned directly or indirectly by an entity (other than a participating FFI, a deemed-compliant FFI (excluding an owner-documented FFI), a U.S. financial institution, a U.S. person that is not a specified U.S. person, an exempt beneficial owner, or an excepted NFFE) that is a corporation, partnership, or trust shall be considered as being owned proportionately by such entity's shareholders, partners, or, in the case of a trust, persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock, and the beneficiaries of the trust. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(ii) *Indirect ownership in a foreign partnership or ownership of a beneficial interest in a foreign trust.* A capital or profits interest in a foreign partnership or an ownership or beneficial interest (as described in paragraph (b)(3) of this section) in a foreign trust that is owned or held directly or indirectly by an entity (other than a participating FFI, a deemed-compliant FFI (excluding an owner-documented FFI), a U.S. financial institution, a U.S. person that is not a specified U.S. person, an exempt beneficial owner, or an excepted NFFE) that is a corporation, partnership, or trust shall be considered as being owned or held proportionately by such entity's shareholders, partners, or, in the case of a trust, persons treated as owners under sections 671 through 679 of any portion of the trust that includes the partnership or beneficial trust interest, and the beneficiaries of the trust. Partnership or beneficial trust interests considered to be owned or held by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned or held by such person.

(iii) *Ownership and holdings through options.* If a specified U.S. person holds, directly or indirectly (applying the principles of paragraphs (b)(2)(i) and (ii) of this section) an option to acquire stock in a foreign corporation, a capital

or profits interest in a foreign partnership, or an ownership or beneficial interest in a foreign trust, such person is considered to own the underlying equity or other ownership interest in such foreign entity for purposes of this paragraph (b). For purposes of the preceding sentence, an option to acquire such an option, and each one of a series of such options, shall be considered an option to acquire such stock or other ownership interest described in this paragraph (b)(2)(iii).

(iv) *Determination of proportionate interest.* For purposes of this paragraph (b), and except as otherwise provided in paragraph (b)(3) of this section, the determination of a person's proportionate interest in a foreign corporation, partnership, or trust is based on all of the relevant facts and circumstances. In making this determination, any arrangement that artificially decreases a specified U.S. person's proportionate interest in any such entity will be disregarded in determining whether such person is a substantial U.S. owner. In lieu of applying the rules of this paragraph (b)(2) to determine whether an owner's proportionate interest in a foreign entity meets the 10 percent threshold described in paragraph (b)(1) of this section, the entity or its withholding agent may opt to treat the owner as a substantial U.S. owner.

(v) *Interests owned or held by a related person.* For purposes of determining whether a person has more than a 10 percent interest in a foreign corporation, foreign partnership, or foreign trust, the person must aggregate the ownership or beneficial interests in the foreign corporation, foreign partnership, or foreign trust that are owned or held by any person related to such person. For purposes of the preceding sentence, a person is related to another person if the relationship between such persons would result in a disallowance of losses under §§ 1.267(a)–1 through 1.267(f)–1 or § 1.707–1(b). Section 1.267(c)–1(a)(4) is applied as if the family of an individual includes the spouses of the members of the individual's family.

(3) *Beneficial interest in a foreign trust*—(i) *In general.* For purposes of paragraph (b)(1)(iii)(B) of this section, a person holds a beneficial interest in a foreign trust if such person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. For purposes of this section, a *mandatory distribution* means a distribution that is required to be made pursuant to the terms of the trust document. A *discretionary distribution* means a distribution that is made to a person at the discretion of the trustee or a person with a limited power of appointment of such trust.

(ii) *Determining the 10 percent threshold in the case of a beneficial interest in a foreign trust.* A person will be treated as holding directly or indirectly more than 10 percent of the beneficial interest in a foreign trust if—

(A) The beneficiary receives, directly or indirectly, only discretionary distributions from the trust and the fair market value of the currency or other property distributed, directly or indirectly, from the trust to such person during the prior calendar year exceeds 10 percent of the value of either all of the distributions made by the trust during that year or all of the assets held by the trust at the end of that year;

(B) The person is entitled to receive, directly or indirectly, mandatory distributions from the trust and the value of the person's interest in the trust, as determined under section 7520, exceeds 10 percent of the value of all the assets held by the trust; or

(C) The person is entitled to receive, directly or indirectly, mandatory distributions and may receive, directly or indirectly, discretionary distributions from the trust, and the value of the person's interest in the trust, determined as the sum of the fair market value of all of the currency or other property distributed from the trust at the discretion of the trustee during the prior calendar year to the person and the value of the person's interest in the trust as determined under section 7520 at the end of that year, exceeds either 10 percent of the value of all distributions made by such trust during the prior calendar year or 10 percent of the value of all the assets held by the trust at the end of that year.

(4) *Exceptions*—(i) *De minimis amount or value exception.* A specified U.S. person is not treated as a substantial U.S. owner if—

(A) The fair market value of the currency or other property distributed, directly or indirectly, from the trust to such specified U.S. person during the prior calendar year is $5,000 or less and,

(B) In the case of a specified U.S. person that is entitled to receive mandatory distributions, the value of such person's interest in the trust is $50,000 or less.

(ii) *Trusts wholly owned by certain U.S. persons.* A trust that is treated as owned only by U.S. persons under sections 671 through 679 is not required to treat any of its beneficiaries as substantial U.S. owners.

(5) *Special rule for certain financial institutions.* In the case of any financial institution described in § 1.1471–5(e)(1)(iii) or (iv) (referring to investment entities and specified insurance companies), this section shall be applied by substituting ''0 percent'' for ''10 percent'' in each place that it appears. Additionally, in the case of a financial institution described in § 1471–5(e)(1)(iii) that is a trust, the rules of paragraph (b)(3) and (4) of this section (referring to beneficial interests in a trust) shall be applied by substituting ''calendar year'' for ''prior calendar year'' in each place that it appears.

(6) *Determination dates for substantial U.S. owners.* A foreign entity may make the determination of whether it has one or more direct or indirect substantial U.S. owners as of the last day of such entity's accounting year or as of the date on which such foreign entity provides the documentation described in § 1.1471–3(d) to the withholding agent for which such determination is required to be made. See § 1.1471–4(c) for when a participating FFI is required to obtain documentation with respect to its account holders.

(7) *Examples.* The following examples illustrate the provisions of paragraph (b) of this section:

Example 1. Indirect ownership. U, a specified U.S. person, owns directly 100% of the sole class of stock of F1, a foreign corporation. F1 owns directly 90% of the sole class of stock of F2, a foreign corporation, and U owns directly the remaining 10% of the sole class of stock of F2. F2 owns directly 10% of the sole class of stock of F3, a foreign corporation, and U owns directly 3% of the sole class of stock of F3. U is treated as owning 13% (3% directly and 10% indirectly) of the sole class of stock of F3 and 100% (10% directly and 90% indirectly) of the sole class of stock of F2 for purposes of this paragraph (b). U is a substantial U.S. owner of F1, F2, and F3.

Example 2. Indirect ownership through entities that are specified U.S. persons. U, a specified U.S. person, owns directly 100% of the sole class of stock of US1, a U.S. corporation that is a specified U.S. person. US1 owns directly 100% of the sole class of stock of US2, a U.S. corporation that is a specified U.S. person. US2 owns directly 15% of the sole class of stock of FC, a foreign corporation. For purposes of this paragraph (b), U, US1, and US2 are all substantial U.S. owners of FC.

Example 3. Determining the 10% threshold in the case of a beneficial interest in a foreign trust. U, a U.S. citizen, holds an interest in FT1, a foreign trust, under which U may receive discretionary distributions from FT1. U also holds an interest in FT2, a foreign trust, and FT2, in turn, holds an interest in FT1 under which FT2 may receive discretionary distributions from FT1. U

receives $25,000 from FT1 in Year 1. FT2 receives $120,000 from FT1 in Year 1 and distributes the entire amount to its beneficiaries in Year 1. The distribution from FT1 is FT2's only source of income and FT2's distributions in Year 1 total $120,000. U receives $40,000 from FT2 in Year 1. FT1's distributions in Year 1 total $750,000. U's discretionary interest in FT1 is valued at $65,000 at the end of Year 1 and therefore does not meet the 10% threshold as determined under paragraph (b)(3)(ii)(A). U's discretionary interest in FT2, however, is valued at $40,000 at the end of Year 1 and therefore meets the 10% threshold as determined under paragraph (b)(3)(ii)(A).

Example 4. Determining ownership (determination date). F, a foreign corporation that is an NFFE, has a calendar year accounting year. On December 31 of Year 1, U, a specified U.S. person, owns 12% of the sole class of outstanding stock of F. In March of Year 2, F redeems a portion of U's stock and reduces U's ownership of F to 9%. In May of Year 2, F opens an account with P, a participating FFI, and delivers to P the documentation required under § 1.1471–3(d). At the time F opens its account with P, U is the only specified U.S. person that directly or indirectly owns stock in F. Because of the redemption, U's interest in F is 9% on the date F opens its account with P. Pursuant to paragraph (b)(6) of this section, F may determine whether it has a substantial U.S. owner as of the date it provides the documentation required under § 1.1471–3(d) to P, which would be the day it opens the account. As a result, F may indicate in its § 1.1471–3(d) documentation that it has no substantial U.S. owners.

(c) *Specified U.S. person.* The term *specified United States person* (or *specified U.S. person*) means any U.S. person other than—

(1) A corporation the stock of which is regularly traded on one or more established securities markets, as described in § 1.1472–1(c)(1)(i);

(2) Any corporation that is a member of the same expanded affiliated group as a corporation described in § 1.1472–1(c)(1)(i);

(3) Any organization exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37);

(4) The United States or any wholly owned agency or instrumentality thereof;

(5) Any State, the District of Columbia, any U.S. territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(6) Any bank as defined in section 581;

(7) Any real estate investment trust as defined in section 856;

(8) Any regulated investment company as defined in section 851 or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–64);

(9) Any common trust fund as defined in section 584(a);

(10) Any trust that is exempt from tax under section 664(c) or is described in section 4947(a)(1);

(11) A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State;

(12) A broker; and

(13) Any tax exempt trust under a section 403(b) plan or section 457(g) plan.

(d) *Withholding agent*—(1) *In general.* Except as provided in this paragraph (d), the term *withholding agent* means any person, U.S. or foreign, in whatever capacity acting, that has the control, receipt, custody, disposal, or payment of a withholdable payment or foreign passthru payment.

(2) *Participating FFIs and registered deemed-compliant FFIs as withholding agents.* The term withholding agent includes a participating FFI that has the control, receipt, custody, disposal, or payment of a passthru payment (as defined in § 1.1471–5(h)). The term withholding agent also includes a registered deemed-compliant FFI to the extent that such FFI is required to withhold on a passthru payment as part of the conditions for maintaining its status as a deemed-compliant FFI under § 1.1471–5(f)(1)(ii). For the withholding requirements of a participating FFI, including the requirement to withhold with respect to limited branches and limited FFIs that are in the same expanded affiliated group as the participating FFI, see §§ 1.1471–4(b) and 1.1472–1(a).

(3) *Grantor trusts as withholding agents.* The term withholding agent includes a grantor trust with respect to a withholdable payment or a foreign passthru payment (in the case of a grantor trust that is a participating FFI) made to a person treated as an owner of the trust under sections 671 through 679. For purposes of determining when a payment is treated as made to such a person, see § 1.1473–1(a)(5)(v).

(4) *Deposit and return requirements.* See § 1.1474–1(b) for a withholding agent's requirement to deposit any tax withheld, and § 1.1474–1(c) and (d) for the requirement to file income tax and information returns (including the special allowance in § 1.1474–1(b)(2) for participating FFIs with respect to dormant accounts).

(5) *Multiple withholding agents.* When several persons qualify as a withholding agent with respect to a single payment, only one tax is required to be withheld and deposited. See § 1.1474–1(a). A person who, as a nominee described in § 1.6031(c)–1T, has furnished to a partnership all of the information required to be furnished under § 1.6031(c)–1T(a) shall not be treated as a withholding agent if the person has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.

(6) *Exception for certain individuals.* An individual is not a withholding agent with respect to a withholdable payment made by the individual outside the course of such individual's trade or business (including as an agent with respect to making or receiving such payment).

(e) *Foreign entity.* The term *foreign entity* means any entity that is not a U.S. person and includes a territory entity.

(f) *Effective/applicability date.* This section generally applies January 28, 2013. For other dates of applicability see §§ 1.1473–1(a)(1)(ii) and 1.1473–1(a)(4)(vi).

■ **Par. 13.** Section 1.1474–1 is added to read as follows:

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

(a) *Payment and returns of tax withheld*—(1) *In general.* A withholding agent is required to deposit any tax withheld pursuant to chapter 4 as provided under paragraph (b) of this section and to make the returns prescribed by paragraphs (c) and (d) of this section. When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and deposited.

(2) *Withholding agent liability.* A withholding agent that is required to withhold with respect to a payment under § 1.1471–2(a), 1.1471–4(b) (in the case of a participating FFI), or 1.1472–1(b) but fails either to withhold or to deposit any tax withheld with an authorized financial institution, as required under paragraph (b) of this section, is liable for the amount of tax not withheld and deposited.

(3) *Use of agents*—(i) *In general.* Except as otherwise provided in this paragraph (a)(3), a withholding agent may authorize an agent to fulfill its obligations under chapter 4. The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of amounts subject to withholding, the withholding

and deposit of tax withheld, and the reporting required on the relevant form) are imputed to the withholding agent on whose behalf it is acting.

(ii) *Authorized agent.* An agent is authorized only if—

(A) There is a written agreement between the withholding agent and the person acting as agent;

(B) A Form 8655, ''Reporting Agent Authorization,'' is filed with the IRS if the agent (including any sub-agent) is acting as a reporting agent for filing Form 1042 or making tax deposits and payments;

(C) Books and records and relevant personnel of the agent (including any sub-agent) are available to the withholding agent (on a continuous basis, including after termination of the relationship) in order to evaluate the withholding agent's compliance with the provisions of chapter 4; and

(D) The withholding agent remains fully liable for the acts of its agent (or any sub-agent) and does not assert any of the defenses that may otherwise be available, including under common law principles of agency, in order to avoid tax liability under the Code.

(iii) *Liability of withholding agent acting through an agent.* A withholding agent acting through an agent is liable for any failure of the agent, such as a failure to withhold an amount or make a payment of tax, in the same manner and to the same extent as if the agent's failure had been the failure of the withholding agent. For this purpose, the agent's actual knowledge or reason to know shall be imputed to the withholding agent. Except as otherwise provided in the QI, WP, or WT agreement, an agent of a withholding agent is subject to the same withholding and reporting obligations that apply to any withholding agent under the provisions of chapter 4 and does not benefit from the special procedures or exceptions that apply to a QI, WP, or WT. If the agent is a foreign person, however, a U.S. withholding agent may treat the acts of the foreign agent as its own for purposes of determining whether it has complied with the provisions of chapter 4. The withholding agent's liability under paragraph (a)(2) of this section will exist even if the agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of chapter 4. The same tax, interest, or penalties, however, shall not be collected more than once.

(4) *Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions*—(i) *In general.* A withholding agent that cannot reliably associate a payment with documentation on the date of payment and that does not withhold under § 1.1471–2(a), 1.1471–4(b), or 1.1472–1(b), or withholds at less than the 30 percent rate prescribed, is liable under this section for the tax required to be withheld under § 1.1471–2(a), 1.1471–4(b), or 1.1472–1(b) (including interest, penalties, or additions to tax otherwise applicable in respect of the failure to deduct and withhold) unless—

(A) The withholding agent has appropriately relied on the presumptions described in § 1.1471–3(f) in order to treat the payment as exempt from withholding; or

(B) The withholding agent obtained after the date of payment valid documentation that meets the requirements of § 1.1471–3(c)(7) to establish that the payment was, in fact, exempt from withholding.

(ii) *Withholding satisfied by another withholding agent.* If a withholding agent fails to deduct and withhold any amount required to be deducted and withheld under § 1.1471–2(a), 1.1471–4(b), or 1.1472–1(b), and the tax is satisfied by another withholding agent or is otherwise paid, then the amount of tax required to be deducted and withheld shall not be collected from the first-mentioned withholding agent. However, the withholding agent is not relieved from liability in any such case for any interest or penalties or additions to tax otherwise applicable in respect of the failure to deduct and withhold.

(b) *Payment of withheld tax*—(1) *In general.* Except as otherwise provided in this paragraph (b), every withholding agent who withholds tax pursuant to chapter 4 shall deposit such tax with an authorized financial institution as provided in § 1.6302–2(a) or by electronic funds transfer as provided under § 31.6302–1(h) of this chapter. If for any reason the total amount of tax required to be deposited for any calendar year pursuant to the income tax return described in paragraph (c) of this section has not been deposited pursuant to § 1.6302–2, the withholding agent shall pay the balance of such tax due for such year at such place as the IRS shall specify. The tax shall be paid when filing the return described in paragraph (c)(1) of this section for such year, unless the IRS specifies otherwise. See § 1.1471–4(b)(6) for the special rule allowing participating FFIs to set aside in escrow amounts withheld with respect to dormant accounts.

(2) *Special rule for foreign passthru payments and payments of gross proceeds that include an undetermined amount of income subject to tax.* [Reserved].

(c) *Income tax return*—(1) *In general.* Every withholding agent shall file an income tax return on Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' (or such other form as the IRS may prescribe) to report chapter 4 reportable amounts (as defined in paragraph (d)(2)(i) of this section). This income tax return shall be filed on the same income tax return used to report amounts subject to reporting for chapter 3 purposes as described in § 1.1461–1(b). The return must show the aggregate amount of payments that are chapter 4 reportable amounts and must report the tax withheld for the preceding calendar year by the withholding agent, in addition to any information required by the form and its accompanying instructions. Withholding certificates and other statements or information provided to a withholding agent are not required to be attached to the return. A Form 1042 must be filed under this paragraph (c)(1) even if no tax was required to be withheld for chapter 4 purposes during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable period of limitations on assessment and collection with respect to the amounts required to be reported on the Form 1042. See section 6501 and the regulations thereunder for the applicable period of limitations. Adjustments to the total amount of tax withheld described in § 1.1474–2 shall be stated on the return as prescribed by the form and its accompanying instructions.

(2) *Participating FFIs, registered deemed-compliant FFIs, and U.S. branches treated as U.S. persons.* Except as otherwise provided under an FFI agreement, a participating FFI or registered deemed-compliant FFI shall file Form 1042 in accordance with paragraph (c)(1) of this section to report chapter 4 reportable amounts for which the participating FFI or registered deemed-compliant FFI is required to file Form 1042–S, as described in paragraph (d)(4)(iii) of this section. A participating FFI or registered deemed-compliant FFI with a U.S. branch that is treated as a U.S. person must exclude from Form 1042 payments made and taxes withheld by such U.S. branch. A U.S. branch that is treated as a U.S. person shall file a separate Form 1042 in accordance with paragraph (c)(1) of this section and the instructions on the form to report chapter 4 reportable amounts.

(3) *Amended returns.* An amended return under this paragraph (c)(3) must be filed on Form 1042. An amended return must include such information as the form or its accompanying

instructions shall require, including, with respect to any information that has changed from the time of the filing of the return, the information that was shown on the original return and the corrected information.

(d) *Information returns for payment reporting*—(1) *Filing requirement*—(i) *In general.* Every withholding agent must file an information return on Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' (or such other form as the IRS may prescribe) to report to the IRS chapter 4 reportable amounts as described in paragraph (d)(2)(i) of this section that were paid to a recipient during the preceding calendar year. Except as otherwise provided in paragraphs (d)(4)(ii)(B) (certain unknown recipients) and (d)(4)(i)(B) and (d)(4)(iii)(A) of this section (describing payees includable in reporting pools of a participating FFI or registered deemed-compliant FFI), a separate Form 1042–S must be filed with the IRS for each recipient of an amount subject to reporting under paragraph (d)(2)(i) of this section and for each separate type of payment made to a single recipient in accordance with paragraph (d)(4)(i) of this section. The Form 1042–S shall be prepared in such manner as the form and its accompanying instructions prescribe. One copy of the Form 1042–S shall be filed with the IRS on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid, with a transmittal form as provided in the instructions to the form. Withholding certificates, certifications, documentary evidence, or other statements or documentation provided to a withholding agent are not required to be attached to the form. A copy of the Form 1042–S must be furnished to the recipient for whom the form is prepared (or any other person, as required under this paragraph or the instructions to the form) and to any intermediary or flow-through entity described in paragraph (d)(3)(vii) of this section on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid. The copy provided to the persons described in the preceding sentence may show more than one type of income or other payment subject to reporting on the Form 1042–S. The withholding agent must retain a copy of each Form 1042–S for the period of limitations on assessment and collection applicable to the tax reportable on the Form 1042 to which the Form 1042–S relates (determined as set forth in paragraph (c)(1) of this section). See paragraph (d)(4)(iii) of this section for the additional reporting requirements of participating FFIs and deemed-compliant FFIs.

(ii) *Recipient*—(A) *Defined.* Except as otherwise provided in paragraph (d)(1)(ii)(B) of this section, the term *recipient* under this paragraph (d) means a person that is a recipient of a chapter 4 reportable amount, and includes—

(*1*) With respect to a payment of U.S. source FDAP income—

(*i*) A QI (including a QI that is a foreign branch of a U.S. person);

(*ii*) A WP or WT;

(*iii*) A participating FFI or a registered deemed-compliant FFI that is an NQI, NWP, or NWT (including its U.S. branch that is not treated as a U.S. person) and that provides its withholding agent with sufficient information to determine the portion of the payment allocable to its reporting pools of recalcitrant account holders, payees that are nonparticipating FFIs, and payees that are U.S. persons described in paragraph (d)(4)(i)(B) of this section;

(*iv*) An account holder or payee to the extent that the withholding agent issues a Form 1042–S to such account holder or payee;

(*v*) An FFI that is a beneficial owner of the payment (including a limited branch of the FFI);

(*vi*) A U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person;

(*vii*) A territory financial institution treated as a U.S. person;

(*viii*) An excepted NFFE that is not acting as an agent or intermediary with respect to the payment;

(*ix*) A passive NFFE except to the extent described in paragraph (d)(1)(ii)(A)(*1*)(*x*) (certain flow-through NFFEs) of this section;

(*x*) A foreign person that is a partner or beneficiary in a flow-through entity that is an NFFE when the withholding agent treats such partner or beneficiary as a payee and beneficial owner because the requirements of § 1.1472–1(d)(3) are met;

(*xi*) An exempt beneficial owner of a payment, including when the payment is made to such owner through an FFI (including a nonparticipating FFI) that provides documentation and information sufficient for a withholding agent to determine the portion of the payment allocable to such owner; and

(*xii*) Any person (including a flow-through entity) or U.S. branch of a participating FFI or reporting Model 1 FFI receiving such income that is (or is deemed to be) effectively connected with the conduct of its trade or business in the United States;

(*2*) With respect to a payment other than U.S. source FDAP income. [Reserved]; and

(*3*) Any other person required to be reported as a recipient by Form 1042–S, its accompanying instructions, under an FFI agreement, or paragraph (d)(4)(iii) of this section with respect to the Form 1042–S reporting requirements of a participating FFI.

(B) *Persons that are not recipients.* Persons that are not recipients include—

(*1*) With respect to a payment of U.S. source FDAP income—

(*i*) A participating FFI, registered deemed-compliant FFI, or certified deemed-compliant FFI that is an NQI, NWP, or NWT (including its U.S. branch that is not treated as a U.S. person) and that fails to provides its withholding agent with sufficient information to allocate the payment to its account holders and payees;

(*ii*) A financial institution (other than a nonparticipating FFI) to the extent that the withholding agent issues a Form 1042–S to the FFI's account holder or payee;

(*iii*) A participating FFI or a registered deemed-compliant FFI that is an NQI, NWP, or NWT (including its U.S. branch that is not treated as a U.S. person) to the extent it provides its withholding agent with sufficient information to allocate the payment to its account holders and payees that are exempt from withholding under chapter 4;

(*iv*) An account holder or payee of a participating FFI or registered deemed-compliant FFI (including an account holder or payee of a U.S. branch of such FFI that is not treated as a U.S. person) that is included in the FFI's reporting pools described in paragraph (d)(4)(i)(B) of this section;

(*v*) A nonparticipating FFI that acts as an intermediary with respect to a payment or that is a flow-through entity (including a limited branch);

(*vi*) An account holder or payee of a nonparticipating FFI except to the extent described in paragraph (d)(1)(ii)(A)(*1*)(*xi*) of this section for an exempt beneficial owner;

(*vii*) Except as provided in paragraph (d)(1)(ii)(A)(*1*)(i) of this section (referring to a QI that is a foreign branch of a U.S. person), a wholly owned entity that is disregarded under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner;

(*viii*) A territory financial institution to the extent provided in paragraph (d)(4)(i)(D)(*2*) and (*3*) of this section; and

(*ix*) A flow-through entity that is a passive NFFE to the extent that the withholding agent treats a foreign person that is a partner or beneficiary of

the NFFE as a recipient pursuant to paragraph (d)(1)(ii)(A)(*1*)(*x*) of this section;

(*2*) With respect to a payment other than U.S. source FDAP income. [Reserved]; and

(*3*) Any other person not treated as a recipient on Form 1042–S, its accompanying instructions, or under an FFI agreement.

(2) *Amounts subject to reporting*—(i) *In general.* Subject to paragraph (d)(2)(iii) of this section, the term *chapter 4 reportable amount* means each of the following amounts reportable on a Form 1042–S for purposes of chapter 4—

(A) U.S. source FDAP income that is reportable on Form 1042–S under § 1.1461–1(c)(2)(i) or that is otherwise subject to withholding under chapter 4 paid on or after January 1, 2014;

(B) Gross proceeds subject to withholding under chapter 4;

(C) A foreign passthru payment subject to withholding under chapter 4; and

(D) A foreign reportable amount paid by a participating FFI to the extent reporting of such amount is required under paragraph (d)(4)(iii)(C) of this section. The term *foreign reportable amount* means a payment of FDAP income as defined in § 1.1473–1(a)(2)(i)(A) that would be a withholdable payment if paid by a U.S. person.

(ii) *Exception to reporting.* Except as otherwise provided in this paragraph (d)(2)(ii), a chapter 4 reportable amount does not include an amount paid to a U.S. person if the withholding agent treats such U.S. person as a payee for purposes of determining whether withholding is required under §§ 1.1471–2 and 1.1472–1. A chapter 4 reportable amount does, however, include an amount paid to a participating FFI or registered deemed-compliant FFI to the extent allocable to its reporting pool of payees that are U.S. persons as described in paragraph (d)(4)(i)(B) of this section.

(iii) *Coordination with chapter 3.* A payment that is not subject to reporting under this paragraph (d)(2) may be subject to chapter 3 reporting on Form 1042–S to the extent provided on such form and its accompanying instructions or under § 1.1461–1(c)(2). The recipient information and other information required to be reported on Form 1042–S for purposes of chapter 4 shall be in addition to the information required to be provided on Form 1042–S for purposes of chapter 3.

(3) *Required information.* The information required to be furnished under this paragraph (d)(3) shall be based upon the information provided by or on behalf of the recipient of an amount subject to reporting (as corrected and supplemented based on the withholding agent's actual knowledge) or the presumption rules provided under § 1.1471–3(f) for a U.S. withholding agent and under § 1.1471–4(c)(3)(ii) and (c)(4)(i) for a participating FFI. The Form 1042–S must include the following information, if applicable—

(i) The name, address, and EIN or GIIN (as applicable) of the withholding agent (as required on the instructions to the form) and the withholding agent's status for chapter 3 and chapter 4 purposes (as defined in the instructions to the form);

(ii) A description of each category of income or payment made based on the income and payment codes provided on the form (for example, interest, dividends, and gross proceeds) and the aggregate amount in each category expressed in U.S. dollars;

(iii) For the reporting required by a participating FFI under paragraph (d)(4)(iii)(C) of this section, the aggregate amount of foreign reportable amounts paid to a nonparticipating FFI in addition to the information described in this paragraph (d)(3);

(iv) The rate and amount of withholding applied or, in the case of a payment of U.S. source FDAP income not subject to withholding and reportable under paragraph (d)(2)(i)(A) of this section, the basis for exempting the payment from withholding under chapter 4 based on exemption codes provided on the form);

(v) The name and address of the recipient and its TIN or GIIN (as applicable) and foreign taxpayer identification number and date of birth (as required on the instructions to the form);

(vi) In the case of a payment to a person (including a flow-through entity or U.S. branch) for which the payment is reported as effectively connected with its conduct of a trade or business in the United States or, in the case of a U.S. branch that is treated as a U.S. person, the EIN used by the person or U.S. branch to file its U.S. income tax returns;

(vii) The name, address of any FFI, flow-through entity that is an NFFE, or U.S. branch or territory financial institution that is not treated as a U.S. person when an account holder or owner of such entity (including an unknown recipient or owner) is treated as the recipient of the payment;

(viii) The EIN or GIIN (as applicable), status for chapter 3 and chapter 4 purposes (as required on the instructions to the form) of an entity reported under paragraph (d)(3)(vii) of this section;

(ix) The country of incorporation or organization (based on the country codes provided on the form) of any entity the name of which appears on the form; and

(x) Such information as the form or instructions may require in addition to, or in lieu of, information required under this paragraph (d)(3).

(4) *Method of reporting*—(i) *Payments by U.S. withholding agent to recipients.* Except as otherwise provided in this paragraph (d)(4) or on the Form 1042–S and its accompanying instructions, a withholding agent that is a U.S. person (including a U.S. branch that is treated as a U.S. person and excluding a foreign branch of a U.S. person that is a QI) and that makes a payment of a chapter 4 reportable amount must file a separate form for each recipient that receives such amount. Except as otherwise provided on Form 1042–S or its instructions, only payments for which the income or payment code, exemption code, withholding rate, and recipient code are the same may be reported on a single form filed with the IRS. See paragraph (d)(4)(ii) of this section for reporting of payments made to a person that is not a recipient and that is otherwise required to be reported on Form 1042–S.

(A) *Payments to certain entities that are beneficial owners.* If the beneficial owner of a payment made by a U.S. withholding agent is an exempt beneficial owner, an FFI, an NFFE, or a territory entity, it must complete Form 1042–S treating such entity as the recipient of the payment.

(B) *Payments to participating FFIs, deemed-compliant FFIs, and certain QIs.* Except as otherwise provided in this paragraph (d)(4)(i)(B), a U.S. withholding agent that makes a payment of a chapter 4 reportable amount to a participating FFI or deemed-compliant FFI that is an NQI, NWP, or NWT must complete a Form 1042–S treating such FFI as the recipient. With respect to a payment of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT or QI that elects to be withheld upon under section 1471(b)(3) and from whom the withholding agent receives pooled information regarding such FFI's account holders and payees, a U.S. withholding agent must complete a separate Form 1042–S issued to the participating FFI, registered deemed-compliant FFI, or QI (as applicable) as the recipient with respect to each such pool of account holders or payees. See § 1.1471–2(a)(2)(i) for the requirement of a withholding agent to withhold on

payments of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT. See also § 1.1471–2(a)(2)(iii) in the case of payments made to a QI. See § 1.1461–1(c)(4)(A) for the extent to which reporting is required under that section for U.S. source FDAP income that is reportable on Form 1042–S under chapter 3 and not subject to withholding under chapter 4, in which case the U.S. withholding agent must report in the manner described under § 1.1461–1(c)(4)(ii) and paragraph (d)(4)(ii)(A) of this section. See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable if participating FFIs, deemed-compliant FFIs, or QIs provide specific payee information for reporting to the recipient of the payment for Form 1042–S reporting purposes. See paragraph (d)(4)(iii) of this section for the residual reporting responsibilities of an NQI, NWP, or NWT that is an FFI.

(C) *Amounts paid to a U.S. branch of a participating FFI or registered deemed-compliant FFI.* A U.S. withholding agent making a payment of U.S. source FDAP income to a U.S. branch of a participating FFI or registered deemed-compliant FFI shall complete Form 1042–S as follows—

(*1*) If the U.S. branch is treated as a U.S. person, the withholding agent treats amounts paid as effectively connected with the conduct of the branch's trade or business in the United States, or the U.S. branch is the beneficial owner of the payment, the withholding agent must file Form 1042–S reporting the U.S. branch as the recipient;

(*2*) If the U.S. branch is not treated as a U.S. person and provides the withholding agent with a withholding certificate that transmits information regarding its reporting pools as described in paragraph (d)(4)(i)(B) of this section or information regarding each recipient that is an account holder or payee of the U.S. branch, the withholding agent must complete a separate Form 1042–S issued to the U.S. branch for each such pool to the extent required on the form and its accompanying instructions or must complete a separate Form 1042–S issued to each recipient whose documentation is associated with the U.S. branch's withholding certificate as described in paragraph (d)(4)(ii)(A) of this section and report the U.S. branch as an entity not treated as a recipient; or

(*3*) If the U.S. branch is not treated as a U.S. person, to the extent its fails to provide sufficient information regarding its account holders or payees, the withholding agent shall report the recipient of the payment as an unknown recipient to the extent recipient information is not provided and report the U.S. branch as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

(D) *Amounts paid to territory financial institutions that are flow-through entities or acting as intermediaries.* A U.S. withholding agent making a withholdable payment to a territory financial institution that is a flow-through entity or that acts as an intermediary must complete Form 1042–S as follows—

(*1*) If the territory financial institution is treated as a U.S. person or is the beneficial owner of the payment, the withholding agent must file Form 1042–S treating the territory financial institution as the recipient;

(*2*) If the territory financial institution is not treated as a U.S. person and provides the withholding agent with a withholding certificate that transmits information regarding each recipient that is an partner, beneficiary, owner, account holder, or payee, the withholding agent must complete a separate Form 1042–S for each recipient whose documentation is associated with the territory financial institution's withholding certificate as described in paragraph (d)(4)(ii)(A) of this section and must report the territory financial institution under that paragraph; or

(*3*) If the territory financial institution is not treated as a U.S. person, to the extent its fails to provide sufficient information regarding its partners, beneficiaries, owners, account holders or payees, the withholding agent shall report the recipient of the payment as an unknown recipient and report the territory financial institution as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

(E) *Amounts paid to NFFEs.* A U.S. withholding agent that makes payments of chapter 4 reportable amounts to a passive NFFE shall complete Forms 1042–S treating the passive NFFE as the recipient, except to the extent such withholding agent treats a partner, beneficiary, or owner in a flow-through entity that is a passive NFFE as a payee. In the case of an excepted NFFE that is a flow-through entity, see § 1.1461–1(c)(4)(A) for the extent to which reporting is required with respect to the partners, beneficiaries, or owners of such entities.

(ii) *Payments made by withholding agents to certain entities that are not recipients*—(A) *Entities that provide information for a withholding agent to perform specific payee reporting.* If a U.S. withholding agent makes a payment of a chapter 4 reportable amount to a flow-through entity that is a passive NFFE, a nonparticipating FFI receiving a payment on behalf of an exempt beneficial owner, or a participating FFI or deemed-compliant FFI that is an NQI, NWP, or NWT, except as otherwise provided in paragraph (d)(4)(i)(B) of this section, the withholding agent must complete a separate Form 1042–S for each recipient that is a partner, beneficiary, owner, or account holder of such entity to the extent the withholding agent can reliably associate the payment with valid documentation (under the rules of § 1.1471–3(c) and (d)) provided by such entity, as applicable, with respect to each such recipient. If a payment is made through tiers of such entities, the withholding agent must nevertheless complete Form 1042–S for the recipient to the extent it can reliably associate the payment with documentation provided with respect to that recipient. A withholding agent that is completing a Form 1042–S for a recipient described in this paragraph (d)(4)(ii)(A) must include on the form the information described in paragraph (d)(3)(vii) of this section for the entity through which the recipient directly receives the payment.

(B) *Nonparticipating FFI that is a flow-through entity or intermediary.* If a withholding agent makes a payment of a chapter 4 reportable amount to a nonparticipating FFI that it is required to treat as an intermediary with regard to a payment or as a flow-through entity under rules described in § 1.1471–3(c)(2)(iii), and except as otherwise provided in paragraph (d)(1)(ii)(A)(*1*)(*xi*) of this section (relating to an exempt beneficial owner), the withholding agent must report the recipient of the payment as an unknown recipient and report the nonparticipating FFI as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

(C) *Disregarded entities.* If a U.S. withholding agent makes a payment to a disregarded entity but receives a valid withholding certificate or other documentary evidence from a person that is the single owner of a disregarded entity, the withholding agent must file a Form 1042–S treating the single owner as the recipient. The GIIN on the form, or TIN, if required, must be the single owner's reporting identification number or TIN.

(iii) *Reporting by participating FFIs and deemed-compliant FFIs (including QIs, WPs, and WTs)*—(A) *In general.* Except as otherwise provided in paragraphs (d)(4)(iii)(B) (relating to NQIs, NWPs, NWTs, and FFIs electing under section 1471(b)(3)) and (d)(4)(iii)(C) of this section (relating to

transitional payee specific reporting for payments to nonparticipating FFIs), a participating FFI or deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of such FFIs that is not treated as a U.S. person) that makes a payment that is a chapter 4 reportable amount to a recalcitrant account holder or nonparticipating FFI, must complete a Form 1042–S to report such payments. A participating FFI or registered deemed-compliant FFI (including a QI, WP, WT or U.S. branch of such FFI that is not treated as a U.S. person) may report in pools consisting of its recalcitrant account holders and payees that are nonparticipating FFIs. With respect to recalcitrant account holders, the FFI may report in pools consisting of recalcitrant account holders within a particular status described in § 1.1471–4(d)(6) and within a particular income code. Except as otherwise provided in paragraph (d)(4)(iii)(C) of this section, with respect to payees that are nonparticipating FFIs, the FFI may report in pools consisting of one or more nonparticipating FFIs that fall within a particular income code and within a particular status code described in the instructions to Form 1042–S. Alternatively, a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of such FFI that is not treated as a U.S. person) may (and a certified deemed-compliant FFI is required to) perform specific payee reporting to report a chapter 4 reportable amount made to a recalcitrant account holder or a nonparticipating FFI when withholding was applied (or should have applied) to the payment.

(B) *Special reporting requirements of participating FFIs, deemed-compliant FFIs, and FFIs that make an election under section 1471(b)(3).* Except as otherwise provided in paragraph (d)(4)(iii)(C) of this section, a participating FFI or deemed-compliant FFI that is an NQI, NWP, NWT (including a U.S. branch of such FFI that is not treated as a U.S. person), or an FFI that has made an election under section 1471(b)(3) and has provided sufficient information to its withholding agent to withhold and report the payment, is not required to report the payment on Form 1042–S as described in paragraph (d)(4)(iii)(A) of this section if the payment is made to a nonparticipating FFI or recalcitrant account holder and its withholding agent has withheld the correct amount of tax on such payment and correctly reported the payment on a Form 1042–S. Such FFI is required to report a payment, however, when the FFI knows or, has reason to know, that less than the required amount has been withheld by the withholding agent on the payment or the withholding agent has not correctly reported the payment on Form 1042–S. In such case, the FFI must report on Form 1042–S to the extent required under paragraph (d)(4)(iii)(A) of this section. See, however, § 1.1471–4(d)(6) for the requirement to report certain aggregate information regarding accounts held by recalcitrant account holders on Form 8966, ''FATCA Report,'' regardless of whether withholdable payments are made to such accounts.

(C) *Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, and WTs) for certain payments made to nonparticipating FFIs (transitional).* Except as otherwise provided in the instructions to Form 1042–S, if a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of such FFI that is not treated as a U.S. person) makes a payment to a nonparticipating FFI of a foreign reportable amount as defined in paragraph (d)(2)(i)(D) of this section, the FFI must report on Form 1042–S on a payee specific basis the aggregate amount of all foreign reportable amounts paid by the FFI to the nonparticipating FFI and any payment of U.S. source FDAP income made to such nonparticipating FFI for whom the FFI receives the payment (and tax withheld) for each of the calendar years 2015 and 2016.

(D) *Reporting by U.S. branches of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person.* A U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person must report amounts paid to recipients on Forms 1042–S in the same manner as a U.S. withholding agent under paragraph (d)(4)(i) of this section.

(iv) *Reporting by territory financial institutions.* A territory financial institution that is not treated as a U.S. person will not be required to report on Form 1042–S if another withholding agent has reported the same amount with regard to the same recipient for which such entity would otherwise be required to file a return under this paragraph (d)(4)(iv) and such withholding agent has withheld the entire amount required to be withheld from such payment. A territory financial institution must, however, report payments made to recipients for whom it has failed to provide the appropriate documentation to another withholding agent or to the extent it knows, or has reason to know, that less than the required amount has been withheld. A territory financial institution that is treated as a U.S. person or is otherwise required under this paragraph (d)(4)(iv) to report amounts paid to recipients on Forms 1042–S must report in the same manner as a U.S. withholding agent.

(v) *Nonparticipating FFIs.* A nonparticipating FFI that is a flow-through entity or that acts as an intermediary with respect to a payment may file Forms 1042 and 1042–S only to report and allocate tax withheld to the account holders, partners, owners, or beneficiaries of the nonparticipating FFI.

(vi) *Other withholding agents.* Any person that is a withholding agent that is not described in any of paragraphs (d)(4)(i) through (v) of this section shall file Forms 1042–S in the same manner as a U.S. withholding agent and in accordance with the instructions to the form.

(e) *Magnetic media reporting.* A withholding agent that is not a financial institution and that is required to file 250 or more Form 1042–S information returns for a taxable year must file Form 1042–S returns on magnetic media. See § 301.6011–2(b) of this chapter for the requirements of a withholding agent that is not a financial institution with respect to the filing of Forms 1042–S on magnetic media. See § 301.1474–1(a) of this chapter for the requirements applicable to a withholding agent that is a financial institution with respect to the filing of Forms 1042–S on magnetic media.

(f) *Indemnification of withholding agent.* A withholding agent is indemnified against the claims and demands of any person for the amount of any tax it deducts and withholds in accordance with the provisions of chapter 4 and the regulations thereunder. A withholding agent that withholds based on a reasonable belief that such withholding is required under chapter 4 and the regulations thereunder is treated for purposes of section 1474 and this paragraph (f) as having withheld tax in accordance with the provisions of chapter 4 and the regulations thereunder. This paragraph (f) does not relieve a withholding agent from tax liability under chapter 3 or chapter 4 or the regulations under those chapters.

(g) *Extensions of time to file Forms 1042 and 1042–S.* The IRS may grant an extension of time to file Form 1042 or 1042–S as described in § 1.1461–1(g).

(h) *Penalties.* For penalties and additions to tax for failure to file returns or file and furnish statements in accordance with this section, see sections 6651, 6662, 6663, 6721, 6722,

6723, 6724(c), 7201, 7203, and the regulations under those sections. For penalties and additions to tax for failure to timely pay the tax required to be withheld under chapter 4, see sections 6656, 6672, 7202, and the regulations under those sections.

(i) *Additional reporting requirements with respect to U.S. owned foreign entities and owner-documented FFIs*—(1) *Reporting by certain withholding agents with respect to owner-documented FFIs.* Beginning in calendar year 2014, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471–4(d)) makes during a calendar year a payment of a chapter 4 reportable amount to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under § 1.1471–3(d)(6), the withholding agent is required to report for such calendar year with respect to each specified U.S. person that has a direct or indirect debt or equity interest in such entity. Such report must be made on Form 8966 (or such other form as the IRS may prescribe) and filed on or before March 31 of the calendar year following the year in which the withholdable payment was made. The report must contain the following information—

(i) The name of the owner-documented FFI;

(ii) The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*);

(iii) The total of all payments made to the owner-documented FFI;

(iv) The account balance or value of the account held by the owner-documented FFI; and

(v) Any other information required on Form 8966 and its accompanying instructions provided for purposes of such reporting.

(2) *Reporting by certain withholding agents with respect to U.S. owned foreign entities that are NFFEs.* Beginning in calendar year 2014, in addition to the reporting on Form 1042–S required under paragraph (d)(4)(i)(E) of this section, a withholding agent (other than an FFI reporting accounts held by NFFEs under § 1.1471–4(d)) that receives information about any substantial U.S. owners of an NFFE that is not an excepted NFFE as defined in § 1.1472–1(c) shall file a report with the IRS for such calendar year with respect to any substantial U.S. owners of such NFFE. Such report must be made on Form 8966 (or such other form as the IRS may prescribe) and filed on or before March 31 of the calendar year following the year in which the withholdable payment was made. The report must contain the following information—

(i) Name of the NFFE that is owned by a substantial U.S. owner;

(ii) The name, address, and TIN of each substantial U.S. owner of such NFFE;

(iii) The total of all payments made to the NFFE; and

(iv) Any other information as required by the form and its accompanying instructions.

(3) *Cross reference to reporting by participating FFIs.* For the reporting requirements of a participating FFI with respect to an account holder that is a U.S. owned foreign entity or that it treats as an owner-documented FFI, see § 1.1471–4(d).

(j) *Effective/applicability date.* This section generally applies on January 28, 2013. For other dates of applicability see §§ 1.1474–1(d)(4)(iii)(C) and 1.1474–1(i).

■ **Par. 14.** Section 1.1474–2 is added to read as follows:

§ 1.1474–2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax*—(1) *In general.* Except as otherwise provided by this section, a withholding agent that has overwithheld tax under chapter 4 and made a deposit of the tax as provided in § 1.6302–2(a) may adjust the amount of overwithheld tax either pursuant to the reimbursement procedure described in paragraph (a)(3) of this section or pursuant to the set-off procedure described in paragraph (a)(4) of this section. Adjustments under this paragraph (a) may only be made within the time prescribed under paragraph (a)(3) or (a)(4) of this section. After such time, a refund of the amount of overwithheld tax can only be claimed pursuant to the procedures described in § 1.1474–5 and chapter 65 of the Code and the regulations thereunder.

(2) *Overwithholding.* For purposes of this section, the term *overwithholding* means an amount actually withheld (determined before application of the adjustment procedures under this section and regardless of whether such overwithholding was in error or appeared correct at the time it occurred) from an item of income or other payment pursuant to chapter 4 that is in excess of the greater of—

(i) The amount required to be withheld with respect to such item of income or other payment under chapter 4; and

(ii) The actual tax liability of the beneficial owner that is attributable to the income or payment from which the amount was withheld.

(3) *Reimbursement of tax*—(i) *General rule.* Under the reimbursement procedure, the withholding agent may repay the beneficial owner or payee for an amount of overwithheld tax. In such case, the withholding agent may reimburse itself by reducing, by the amount actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under § 1.6302–2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. A withholding agent must obtain valid documentation as described under § 1.1471–3(c)(6) with respect to the beneficial owner or payee supporting a reduced rate of withholding before reducing the amount of any deposit of tax under this paragraph (a)(3)(i). Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(A) The repayment of the beneficial owner or payee occurs before the earlier of the due date (without regard to extensions) for filing the Form 1042–S for the calendar year of overwithholding or the date that the Form 1042–S is actually filed with the IRS;

(B) The withholding agent states on a timely filed (not including extensions) Form 1042–S the amount of tax withheld and the amount of any actual repayment; and

(C) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414–1.

(ii) *Record maintenance.* If the beneficial owner or payee is repaid an amount of overwithheld tax under the provisions of this paragraph (a)(3), the withholding agent shall keep as part of its records a receipt showing the date and amount of repayment, and the withholding agent must provide a copy of such receipt to the beneficial owner or payee. For this purpose, a canceled check or an entry in a statement is sufficient, provided that the check or statement contains a specific notation that it is a refund of tax overwithheld.

(4) *Set-offs.* Under the set-off procedure, the withholding agent may repay the beneficial owner or payee for an amount of overwithheld tax by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 or 4 to be withheld from the amount paid by the withholding agent to such person before the earlier of the due date (without regard to extensions) for filing the Form 1042–S for the calendar year of overwithholding or the date that the

Form 1042–S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042–S (or an amended form) for the calendar year of overwithholding and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such payment under chapter 3 or 4, respectively.

(5) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

Example 1. (i) Fund A is a unit investment trust that is an FFI and a resident of Country X. Fund A also qualifies for the benefits of the income tax treaty between the United States and Country X. On December 1, 2016, domestic corporation C pays a dividend of $100 to Fund A, at which time C withholds $30 of tax pursuant to § 1.1471–2(a) and remits the balance of $70 to Fund A, because it does not hold valid documentation that Fund A is a participating FFI or deemed-compliant FFI. On February 10, 2017, prior to the time that C is obligated to file its Form 1042, Fund A furnishes a valid Form W–8BEN described in §§ 1.1441–1(e)(2)(i) and 1.1471–3(c)(3)(ii) upon which C may rely to treat Fund A as the beneficial owner of the income and as a participating FFI so that C may reduce the rate of withholding to 15% under the provisions of the United States-Country X income tax treaty with respect to the payment. C repays the excess tax withheld of $15 to Fund A.

(ii) During the 2016 calendar year, C makes no other payments upon which tax is required to be withheld under chapter 3 or 4; accordingly, its Form 1042 for such year, filed on March 15, 2017, shows total tax withheld of $30, an adjusted total tax withheld of $15, and tax deposited of $30 for such year. Pursuant to § 1.6414–1, C claims a credit for the overpayment of $15 shown on the Form 1042 for 2016. Accordingly, C is permitted to reduce by $15 any deposit required by § 1.6302–2 to be made of tax withheld during the 2017 calendar year with respect to taxes due under chapter 3 or 4. The Form 1042–S required to be filed by C with respect to the dividend of $100 paid to Fund A in 2016 is required to show tax withheld of $30 and tax repaid of $15 to Fund A.

Example 2. (i) In November 2016, Bank A, a foreign bank organized in Country X that is an NQI, receives on behalf of one of its account holders, Z, an individual, a $100 dividend payment from C, a domestic corporation. At the time of payment, C withholds $30 pursuant to § 1.1471–2(a) and remits the balance of $70 to Bank A, because it does not hold valid documentation that it may rely on to treat Bank A as a participating FFI or deemed-compliant FFI. In December 2016, prior to the time that C files its Forms 1042 and 1042–S, Bank A furnishes a valid Form W–8IMY and FFI withholding statement described in § 1.1471–3(c)(3)(iii) that establishes Bank A's status as a participating FFI that is an NQI, as well as a valid Form W–8BEN that has been completed by Z as described in § 1.1471–3(c)(3)(ii) and § 1.1441–1(e)(2)(i) upon which C may rely to treat the payment as made to Z, a nonresident alien individual who is a resident of Country X eligible for a reduced rate of withholding of 15% under the income tax treaty between the United States and Country X. Although C has already deposited the $30 that was withheld, as required by § 1.6302–2(a)(1)(iv), C remits the amount of $15 to Bank A for the benefit of Z.

(ii) During the 2016 calendar year, C makes no other payments upon which tax is required to be withheld under chapter 3 or 4; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2017, shows total tax withheld of $30, an adjusted total tax withheld of $15, and tax deposited of $30. Pursuant to § 1.6414–1(b), C claims a credit for the overpayment of $15 shown on the Form 1042 for 2014. Accordingly, it is permitted to reduce by $15 any deposit required by § 1.6302–2 to be made of tax withheld during the 2017 calendar year. The Form 1042–S required to be filed by C for 2016 with respect to the dividend of $100 beneficially owned by Z is required to show tax withheld of $30 and tax repaid of $15 to Z.

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent that has underwithheld under chapter 4 may apply the procedures described in § 1.1461–2(b) (by substituting the term ''chapter 4'' for ''chapter 3'') to satisfy its withholding obligations under chapter 4 with respect to a payee or beneficial owner.

(c) *Effective/applicability date.* This section applies January 28, 2013.

■ **Par. 15.** Section 1.1474–3 is added to read as follows:

§ 1.1474–3 Withheld tax as credit to beneficial owner of income.

(a) *Creditable tax.* The entire amount of the income, if any, attributable to a payment from which tax is required to be withheld under chapter 4 (including income deemed paid by a withholding agent under § 1.1473–1(a)(2)(v)) shall be included in gross income in a return required to be made by the beneficial owner of the income, without deduction for the amount required to be or actually withheld, but the amount of tax actually withheld shall be allowed as a credit against the total income tax computed in the beneficial owner's return.

(b) *Amounts paid to persons that are not the beneficial owners.* Amounts actually deducted and withheld under chapter 4 on payments made to a fiduciary, agent, partnership, trust, or intermediary are deemed to have been paid by the beneficial owner of the item of income or other payment subject to withholding under chapter 4, except when the fiduciary, agent, partnership, trust, or intermediary pays the tax from its own funds and does not in turn withhold with respect to the payment made to such person. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 upon any amount of distributable net income or other taxable distribution received from a foreign trust, the part of any amount withheld at source under chapter 4 that is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded to the beneficiary in accordance with § 1.1474–5 and chapter 65 of the Code.

(c) *Effective/applicability date.* This section applies January 28, 2013.

■ **Par. 16.** Section 1.1474–4 is added to read as follows:

§ 1.1474–4 Tax paid only once.

(a) *Tax paid.* If the tax required to be withheld under chapter 4 on a payment is paid by the payee, beneficial owner, or the withholding agent, it shall not be re-collected from any other, regardless of the original liability therefor. However, this section does not relieve a person that was required to, but did not, withhold tax from liability for interest or any penalties or additions to tax otherwise applicable.

(b) *Effective/applicability date.* This section applies January 28, 2013.

■ **Par. 17.** Section 1.1474–5 is added to read as follows:

§ 1.1474–5 Refunds or credits.

(a) *Refund and credit*—(1) *In general.* Except to the extent otherwise provided in this section, a refund or credit of tax which has actually been withheld at the source at the time of payment under chapter 4 shall be made to the beneficial owner of the payment to which the amount of withheld tax is attributable if the beneficial owner or payee meets the requirements of this paragraph (a) and any other requirements that may be required under chapter 65. To the extent that the amount withheld under chapter 4 is not actually withheld at source, but is later paid by the withholding agent to the IRS, the refund or credit under chapter 65 of the Code shall be made to the withholding agent to the extent the withholding agent provides documentation with respect to the beneficial owner or payee described in paragraphs (a)(2) and (3) of this section sufficient for the beneficial owner or payee to have obtained a refund of the tax and sufficient for the withholding agent to have applied a reduced rate or exemption from withholding under chapter 4. The preceding sentence shall not, however, apply to a nonparticipating FFI that is acting as a withholding agent with respect to one or

more of its account holders. In such a case, only the account holders of the nonparticipating FFI will be entitled to a credit or refund of an amount withheld under chapter 4, to the extent otherwise allowable under this section. Additionally, there are collective refund procedures for a participating FFI or reporting Model 1 FFI to claim a refund or credit on behalf of certain direct account holders that are beneficial owners of the payment under § 1.1471–4(h) (in lieu of such account holders claiming refund or credit under this paragraph (a)(1)).

(2) *Limitation to refund and credit for a nonparticipating FFI.* Notwithstanding paragraph (a)(1) of this section, a nonparticipating FFI (determined as of the time of payment) that is the beneficial owner of an item of income or other payment that is subject to withholding under chapter 4 shall not be entitled to any credit or refund pursuant to section 1474(b)(2) and this section unless it is entitled to a reduced rate of tax with respect to the income or other payment by reason of any treaty obligation of the United States. If the nonparticipating FFI is entitled to a reduced rate of tax with respect to an item of income or other payment by reason of any treaty obligation of the United States, the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate on the item of income or other payment, and no interest otherwise allowable under section 6611 shall be allowed or paid with respect to such credit or refund.

(3) *Requirement to provide additional documentation for certain beneficial owners*—(i) *In general.* Except as provided in paragraph (a)(3)(ii) of this section, no refund or credit shall be allowed under paragraph (a)(1) of this section to the beneficial owner of the income or other payment to which the amount of such withheld tax was attributable if such beneficial owner is an NFFE, unless the NFFE attaches to its income tax return the information described in paragraph (a)(3)(iii) of this section.

(ii) *Claim of reduced withholding under an income tax treaty.* Paragraph (a)(3)(i) of this section does not apply to the extent that the beneficial owner is entitled to a reduced rate of tax with respect to the income or other payment by reason of any treaty obligation of the United States.

(iii) *Additional documentation to be furnished to the IRS for certain NFFEs.* The information described in this paragraph (a)(3)(iii) is—

(A) A certification that the beneficial owner does not have any substantial U.S. owners;

(B) The form described in § 1.1474–1(i)(2) relating to each substantial U.S. owner of such entity; or

(C) Other appropriate documentation to establish withholding was not required under chapter 4.

(b) *Tax repaid to payee.* For purposes of this section and § 1.6414–1, any amount of tax withheld under chapter 4, which, pursuant to § 1.1474–2(a)(1), is repaid by the withholding agent to the beneficial owner of the income or payment to which the withheld amount is attributable shall be considered as tax which, within the meaning of sections 1474 and 6414, was not actually withheld by the withholding agent.

(c) *Effective/applicability date.* This section applies January 28, 2013.

■ **Par. 18.** Section 1.1474–6 is added to read as follows:

§ 1.1474–6 Coordination of chapter 4 with other withholding provisions.

(a) *In general.* This section coordinates the withholding requirements of a withholding agent when a withholdable payment or foreign passthru payment is subject to withholding under both chapter 4 and another Code provision. See § 1.1473–1(a) for the definition of withholdable payment and see § 1.1471–5(h)(2) for the definition of foreign passthru payment.

(b) *Coordination of withholding for amounts subject to withholding under sections 1441, 1442, and 1443*—(1) *In general.* In the case of a withholdable payment that is both subject to withholding under chapter 4 and is an amount subject to withholding under § 1.1441–2(a), a withholding agent may credit the withholding applied under chapter 4 against its liability for any tax due under sections 1441, 1442, or 1443. See § 1.1474–1(c) and (d) for the income tax return and information return reporting requirements that apply in the case of a payment that is a withholdable payment subject to withholding under chapter 4 that is also an amount subject to withholding under § 1.1441–2(a).

(2) *When withholding is applied.* For purposes of paragraph (b)(1) of this section, withholding is applied by a withholding agent under section 1441 (or section 1442 or 1443) or chapter 4 (as applicable) when the withholding agent has withheld on the payment and has designated the withholding as having been made under section 1441 (or section 1442 or 1443) or chapter 4 to the extent required in the reporting described in § 1.1474–1(c) and (d). For purposes of allowing an offset of withholding and allowing a credit to a withholding agent against its liability for such tax as described in paragraph (b)(1) of this section, withholding is treated as applied for purposes of paragraph (a) of this section only when the withholding agent has actually withheld on a payment and has not made any adjustment for overwithheld tax applicable to the amount withheld that would otherwise be permitted with respect to the payment.

(3) *Special rule for certain substitute dividend payments.* In the case of a dividend equivalent under section 871(m) paid pursuant to a securities lending transaction described in section 1058 (or a substantially similar transaction), or pursuant to a sale-repurchase transaction, a withholding agent may offset its obligation to withhold under chapter 4 for amounts withheld by another withholding agent under chapters 3 and 4 with respect to the same underlying security in such a transaction, but only to the extent that there is sufficient evidence as required under chapter 3 that tax was actually withheld on a prior dividend equivalent paid to the withholding agent or a prior withholding agent with respect to the same underlying security in such transaction.

(c) *Coordination with amounts subject to withholding under section 1445*—(1) *In general.* An amount subject to withholding under section 1445 is not subject to withholding under chapter 4 as described in paragraphs (c)(2)(i) and (ii) of this section.

(2) *Determining the amount of the distribution from certain domestic corporations subject to section 1445 or chapter 4 withholding*—(i) *Distribution from qualified investment entity.* In the case of a passthru payment (including a withholdable payment) subject to withholding under chapter 4 that is a distribution with respect to the stock of a qualified investment entity as described in section 897(h)(4)(A), withholding under chapter 4 does not apply when withholding under section 1445 applies to such amounts. With respect to the portion of such distribution that is not subject to withholding under section 1445 but is subject to withholding under section 1441 (or section 1442 or 1443) and chapter 4, the coordination rule described in paragraph (b)(1) of this section shall apply.

(ii) *Distribution from a United States real property holding corporation.* A distribution (or portion of a distribution) from a United States real property holding corporation (or from a corporation that was a United States real property holding corporation at any time during the five-year period ending

on the date of the distribution) with respect to its stock that is a United States real property interest under section 897(c) is subject to withholding under chapter 4 and is also subject to the withholding provisions of section 1441 (or section 1442 or 1443) and section 1445. In such case, to the extent that the United States real property holding corporation chooses to withhold on a distribution only under section 1441 (or section 1442 or 1443) pursuant to § 1.1441–3(c)(4)(i)(A), the coordination rule described in paragraph (b)(1) of this section shall apply to such distribution. Alternatively, to the extent that the United States real property holding corporation chooses to withhold under both section 1441 (or section 1442 or 1443) and section 1445 pursuant to § 1.1441–3(c)(4)(i)(B), the coordination rule described in paragraph (b)(1) of this section shall apply to the portion of such distribution described in § 1.1441–3(c)(4)(i)(B)(1), and withholding under section 1445 shall apply to the amount of such distribution described in § 1.1441–3(c)(4)(i)(B)(2). A withholding agent other than a United States real property holding corporation may rely, absent actual knowledge or reason to know otherwise, on the representations of the United States real property holding corporation making the distribution regarding the portion of the distribution that is estimated to be a dividend under § 1.1441–3(c)(2)(ii)(A), and in the case of a failure by the withholding agent to withhold under chapter 4 due to this reliance, the required amount shall be imputed to the United States real property holding corporation.

(d) *Coordination with section 1446*—(1) *In general.* Except as otherwise provided in paragraph (d)(2) of this section, a withholdable payment or a foreign passthru payment subject to withholding under section 1446 shall not be subject to withholding under chapter 4. See § 1.1473–1(a)(4)(ii) for the exclusion from withholdable payment and the requirements for such exclusion for any item of income that is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year.

(2) *Determining the amount of distribution subject to section 1446.* [Reserved].

(e) Example Chapter 4 withholding satisfies chapter 3 withholding obligation. WA, a U.S. withholding agent, makes a payment consisting of a dividend from sources within the United States to NPFFI. NPFFI is a nonparticipating FFI that is a resident of Country X, a country that has an income tax treaty in force with the United States that would allow WA to reduce the rate of withholding for section 1442 purposes on a payment of U.S. source dividends paid to NPFFI to 15%. Because the payment is a withholdable payment and NPFFI is a nonparticipating FFI, WA withholds on the payment at the rate of 30% under chapter 4. WA does not make any adjustment for overwithholding that is otherwise permitted with respect to this payment. Although the payment is also an amount subject to withholding under section 1442, WA is not required to withhold any tax on this payment under section 1442. WA may credit its withholding applied under chapter 4 against the amount of tax otherwise required to be withheld on this payment under section 1442. See § 1.1474–5(a)(2) for the credit and refund procedures for nonparticipating FFIs that are entitled to a reduced rate of tax with respect to an amount subject to withholding under chapter 4 by reason of any treaty obligation of the United States.

(f) *Effective/applicability date.* This section applies January 28, 2013.

■ **Par. 19.** Section 1.1474–7 is added to read as follows:

§ 1.1474–7 Confidentiality of information.

(a) *Confidentiality of information.* Pursuant to section 1474(c)(1), the provisions of § 31.3406(f)–1(a) of this chapter shall apply (substituting ''sections 1471 through 1474'' for ''section 3406'') to information obtained or used in connection with the requirements of chapter 4.

(b) *Exception for disclosure of participating FFIs.* Pursuant to section 1474(c)(2), the identity of a participating FFI or deemed-compliant FFI shall not be treated as return information for purposes of section 6103.

(c) *Effective/applicability date.* This section applies January 28, 2013.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 20.** The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

Section 301.1474–1 also issued under 26 U.S.C. 1474(f). * * *

■ **Par. 21.** Section 301.1474–1 is added to read as follows:

§ 301.1474–1 Required use of magnetic media for financial institutions filing Form 1042–S or Form 8966.

(a) *Financial institutions filing certain information returns.* If a financial institution is required to file a Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' (or such other form as the IRS may prescribe) under § 1.1474–1(d) of this chapter, the financial institution must file the information required by the applicable forms and schedules on magnetic media. Additionally, if a financial institution is required to file Form 8966, ''FATCA Report,'' (or such other form as the IRS may prescribe) to report certain information about U.S. accounts, substantial U.S. owners of foreign entities, or owner-documented FFIs as required under this chapter, the financial institution must file the required information on magnetic media or other machine-readable form. Returns filed on magnetic media must be made in accordance with applicable regulations, revenue procedures, publications, forms, instructions, and the IRS.gov Internet site. In prescribing regulations, revenue procedures, publications, forms, and instructions, including those on the IRS.gov Internet site, the Commissioner may direct the type of magnetic media or other machine-readable form used for filing.

(b) *Waiver.* The Commissioner may grant waivers from the requirements of this section in cases of undue hardship. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver also will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file.* If a financial institution fails to file a Form 1042–S or a Form 8966 on magnetic media when required to do so by this section, the financial institution is deemed to have failed to comply with the information reporting requirements under section 6723 of the Code. See section 6724(c) for failure to meet magnetic media requirements. In determining whether there is reasonable cause for failure to file the return, § 301.6651–1(c) and rules similar to the rules in § 301.6724–1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section—(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable regulations, revenue procedures, publications, forms, or instructions. These generally include magnetic tape, tape cartridge, and diskette, as well as other media, such as electronic filing, specifically permitted under the applicable regulations, revenue procedures, publications, forms, or instructions.

(2) *Financial institution.* The term *financial institution* has the meaning set forth in section 1471(d)(5) of the Code and the regulations thereunder.

(e) *Effective/applicability date.* This section applies to any Form 1042–S or Form 8966 (or any other form that the

IRS may prescribe) filed with respect to calendar years ending after December 31, 2013.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: January 11, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–01025 Filed 1–17–13; 4:15 pm]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922

Amendments to National Marine Sanctuary Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 070726416–2682–02]

RIN 0648–AV85

Amendments to National Marine Sanctuary Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to amend the program regulations of the national marine sanctuaries. This rule would update and reorganize the existing regulations, eliminate redundancies across sanctuaries, eliminate outmoded regulations, adopt standard boundary descriptions, and consolidate general and permitting procedures.

DATES: Comments on this proposed rule must be received no later than March 29, 2013.

ADDRESSES: You may submit comments, identified by NOAA–NOS–2011–0120, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NOS-2011-0120,* click the ''Comment Now!'' icon, complete the required fields and enter or attach your comments.
- *Mail:* Meredith Walz, Office of National Marine Sanctuaries, 1305 East-West Highway, 11th floor, Silver Spring, MD 20910.

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

FOR FURTHER INFORMATION CONTACT: Meredith Walz, NOAA Office of National Marine Sanctuaries, 1305 East-West Highway, 11th floor, Silver Spring, MD 20910, (301) 713–3125.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at *http://www.access.gpo.gov/su-docs/aces/aces140.html.*

I. Background

In 1972, Congress passed the Marine Protection, Research, and Sanctuaries Act, which, among other things, establishes the National Marine Sanctuary System (System). Title III of that Act—now also called the National Marine Sanctuaries Act (NMSA)—provides a mechanism for the Secretary of Commerce (Secretary) to designate and manage, as national marine sanctuaries, areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities (16 U.S.C. 1431 *et seq.*). Since the NMSA was passed, thirteen national marine sanctuaries have been designated. Day-to-day management of the System has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). Regulations implementing the NMSA and each sanctuary are codified in Title 15 Part 922 of the Code of Federal Regulations (CFR). Part 922 includes ''general'' regulations applicable to all sanctuaries and ''site-specific'' regulations that relate to each individual sanctuary.

As these sanctuaries have evolved and additional sanctuaries were included in the System, both the general and site-specific regulations have understandably changed and expanded. In certain instances, however, the evolution and expansion of the System has resulted in regulations that are redundant, inconsistent, outdated or conflicting. This rule would update both the general and site-specific regulations, making them more uniform, concise, organized, and understandable. By doing so, it is not the intent of the ONMS to alter the regulations in such a manner that would substantively change existing uses of the sanctuaries or prohibit otherwise permitted activities in the sanctuaries.

In addition, on January 18, 2011, the President issued Executive Order 13563, ''Improving Regulation and Regulatory Review.'' Under this executive order, the President directed all agencies to, among other things, conduct retrospective analysis of existing significant regulations and modify, repeal, or streamline (as deemed appropriate) any regulations that may be outmoded, ineffective, insufficient or excessively burdensome. This rulemaking is part of NOAA's effort to carry out the President's directive.

II. Summary of the Proposed Amendments

This rulemaking proposes to take the following six actions:

- Consolidate regulations applicable to all sanctuaries into appropriate subparts.
- Eliminate general requirements that are either outmoded or merely duplicative of existing statutory requirements.
- Amend procedures for identifying and evaluating marine sites for possible national marine sanctuaries designation.
- Adopt standard boundary descriptions.
- Harmonize and consolidate definitions that are common to all sanctuaries. Similar definitions now found in site-specific regulations would be moved into the general requirements subpart. Where necessary, definitions will be revised to result in a single, uniform definition.
- Reorganize, update, and consolidate the permitting regulations into a single subpart.
- Make other conforming and administrative changes.

Because the proposed changes are numerous and nuanced, NOAA is re-printing the majority of part 922 as it would read if adopted as proposed (excluding appendices and tables).

NOAA is also concurrently in the scoping process to amend the regulations for several national marine sanctuaries (Florida Keys NMS, Thunder Bay NMS, Hawaiian Islands Humpback Whale NMS, and *Monitor* NMS) as part of separate rulemaking processes. Those proposals may be undertaken as part of the sanctuaries' management plan review processes and are independent of the action described in this proposed rule. If necessary, NOAA will later harmonize the regulations for those national marine sanctuaries with any final rule associated with this action.

NOAA proposes to revise the following sections of the regulations of subparts A through R of 15 CFR part 922 with this proposed action.

A. General Regulations

B. 1. Reorganize and Amend Subparts A Through E

NOAA proposes to consolidate existing subparts A (General), B (Site Evaluation List) and sections 922.40 through 922.47 of subpart E (Regulations of General Applicability) into a new subpart A (General and Regulations of General Applicability). Consistent with the purpose of this rule, moving these subparts organizes provisions applicable to all sanctuaries into a single subpart.

2. Amend National Marine Sanctuaries Identification, Evaluation, and Designation Regulations

NOAA proposes to modify the existing subpart B, section 922.10, pertaining to the Site Evaluation List (SEL), and move it to section 922.12. The SEL was established to be a list of marine sites of special national significance from which future national marine sanctuaries can be chosen. NOAA deactivated the SEL in 1995 to focus limited resources on improving management of existing sanctuaries (a decision based in part on the rapid expansion of the National Marine Sanctuary System from 1989–1994). Since 1995, only one sanctuary, Thunder Bay National Marine Sanctuary, has been added to the National Marine Sanctuary System. The ability to review new sites is necessary for NOAA to fulfill its statutory mandate to identify, designate and protect our Nation's special marine areas. In this rulemaking, NOAA proposes to provide an additional method in which sites would be identified and considered active candidates. NOAA does not intend to reactivate the SEL through this rulemaking. Rather, NOAA would continue to work with the National Ocean Council and other stakeholders to further identify ways to better improve the effectiveness of the SEL. Specifically, the SEL would no longer be the exclusive method for NOAA to evaluate potential new sanctuaries. NOAA proposes to delete paragraph 922.10(c) to remove the requirement for sites to be selected from the SEL in order to be identified as an activate candidate. The proposed change would enhance the opportunity for public involvement in nominating sites for consideration as a national marine sanctuary. Rather than solely selecting potential sites from a periodically updated list, the public would be able to petition NOAA as the need arises or as more and better scientific information is known about a particular area. This proposed action is consistent with a history of NOAA making the designation of sanctuaries (and the revisions to their management plans and regulations) an increasingly open and transparent process. This regulatory change also establishes a system of public participation and open exchange of information and ideas.

NOAA also proposes to modify subparagraph (d) which would become subparagraph (c), by removing references to sites being selected from the SEL and section 922.21. This is necessary as existing section 922.21 would be eliminated by this action. The existing section 922.21, subpart C (Designation of National Marine Sanctuaries) reiterates the process for selecting and designating new national marine sanctuaries already spelled out in the NMSA. NOAA believes there is no need for this redundancy in regulations and thus proposes to remove section 922.21.

NOAA also proposes to eliminate the remaining sections and reserve most of subpart C (Designation of National Marine Sanctuaries). The existing subpart C simply restate provisions contained in the NMSA, which establish guidelines, standards, and procedures that must be followed to designate a national marine sanctuary. The existing section 922.22(b) would be the only regulation retained from the existing subpart C. Section 922.22(b) currently governs issuance of fishing regulations. NOAA proposes to amend and move the existing 922.22(b) to the newly amended section 922.3. Under that regulation, the Regional Fishery Management Councils would be provided additional time to respond to the Secretary's request for draft sanctuary fishing regulations. Specifically, the deadline would be extended from the current 120 days to a proposed 180 days. This extension would allow for at least two council meetings to convene before a response is due to the Secretary. NOAA believes this provides a more realistic timeframe for Regional Fishery Management Councils to meet, vote, and develop regulations on proposed actions. NOAA requests comments on the proposed fishing regulations.

NOAA also proposes to eliminate subpart D (Management Plan Development and Implementation) because it is redundant with the NMSA. The NMSA generally provides the instruction and authority to develop management plans, conduct and promote research, monitoring, education, enforcement, and emergency contingencies. As discussed later in this preamble, rather than reserving the subpart, subpart D would be renamed and refocused on permitting procedures.

3. Use of the Term ''Submerged Lands''

NOAA proposes to revise references in the site-specific regulations from ''seabed'' to ''submerged lands'', where appropriate. This proposed change is a technical amendment, made solely for the purpose of updating the language to align with the terms of designation for many of the sanctuaries that now use the term ''submerged lands'' (Channel Islands NMS, Gulf of the Farallones NMS, Gray's Reef NMS, Cordell Bank NMS, and Monterey Bay NMS). This change in terminology results from a change in the term of art used more commonly today than when the original sanctuary regulations were written. In addition, in converting site descriptions in the past, NOAA has stated that these technical changes to the regulations (i.e. replacing the term ''seabed'' with ''submerged lands'') was justified in order to be consistent with the NMSA. NOAA continues to believe this is the case, and doing so in this action is consistent with the purposes of this regulatory action.

However, there are four sites (Flower Garden Banks NMS, Stellwagen Bank NMS, Hawaiian Islands Humpback Whale NMS, and Florida Keys NMS), whose terms of designation do not yet provide authority to regulate activities that would affect ''submerged lands'' of sanctuaries. NOAA plans to update the terms of designation in the future in a separate rulemaking action. In the interim, for those four sites, NOAA proposes to update the regulatory language to ''seabed or submerged lands'' so that the language can evolve with the updating of the terms of designation. This technical change should not result in any impacts, as NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98–498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)).

C. Boundary Descriptions

NOAA proposes to adopt a uniform standard for describing the overall area of each sanctuary. The area for each individual sanctuary was originally calculated using varying spatial techniques. As a result, there are inconsistencies among the sanctuaries in the description of the areal estimate. Currently, six sanctuaries (Channel Islands NMS, Gulf of Farallones NMS, Gray's Reef NMS, Cordell Bank NMS, Monterey Bay NMS, and Stellwagen Bank NMS) describe their sanctuary areas in square nautical miles; three

sanctuaries (Flower Garden Banks NMS, Olympic Coast NMS, and the Florida Keys NMS) provide the areal estimate in a combination of square nautical miles and square kilometers; Thunder Bay NMS provides the estimate in square miles and square kilometers; *Monitor* NMS provides the estimate in miles; National Marine Sanctuary of American Samoa provides it in acres and square miles; and no areal estimate is given for Hawaiian Islands Humpback Whale NMS. To address these inconsistencies, NOAA proposes to describe the area of each sanctuary in square nautical miles, abbreviated as ''nmi^2''. This means that the areal estimate for Gulf of the Farallones NMS, Gray's Reef NMS, Cordell Bank NMS, Monterey Bay NMS, and Olympic Coast NMS, would not be changed, but the descriptor will change from nmi to nmi^2.

In addition, NOAA has recalculated the areal estimates for each sanctuary using consistent, system-wide areal estimation techniques and technology, resulting in an improved estimate of the size of the sanctuaries. There is no change to the boundaries of the sanctuaries. This technical correction does not affect physical, biological, or socioeconomic resources because it does not alter the sanctuary's original size or boundaries. Sanctuary area was originally calculated at the time of designation using widely varying spatial techniques. The sanctuaries whose areal estimates are revised are: *Monitor* NMS, Channel Islands NMS, National Marine Sanctuary of American Samoa, Florida Keys NMS, Flower Garden Banks NMS, Stellwagen Bank NMS, and Thunder Bay NMS. Additionally, the Hawaiian Islands Humpback Whale NMS boundary size is estimated for the first time. This proposal would make the areal estimates uniform throughout the System. The proposed change is a technical amendment, made solely for the purpose eliminating inconsistencies and adopting a uniform standard.

The geographic coordinates associated with the boundaries of each sanctuary would also be updated. Currently, three sanctuaries list the geographic coordinates in degrees, minutes, and seconds (e.g., ''35°00′23″ N latitude and 75°24′32″ W longitude''), five sanctuaries list the geographic coordinates in degrees and decimal minutes (e.g., ''35°14.50'' N latitude and ''75°32.45'' W'' longitude), and another five sanctuaries list the geographic coordinates as decimal degrees (e.g., ''31.362732; -80.921200''). NOAA proposes to convert the geographic coordinates to decimal degrees as calculated using the North American Datum of 1983. The conversion would also include updates to geographic coordinates for special zones of sanctuaries. NOAA believes standardizing the horizontal datum for all sites would lessen confusion arising from the current use of different datum among the various sites, reduce the risk of human error resulting from self-calculations performed by visitors to or those traversing the sanctuary, and it would make the geographic coordinates easier for navigators to write, plot, and read. The shape, size, and location of the actual boundaries would not change.

The proposed changes to the geographic coordinates will not appear in the regulatory text of this proposed rule. Rather, corresponding tables containing the proposed updated geographic coordinates can be viewed and downloaded from *http://sanctuaries.noaa.gov/library/aslldocs.html.* Copies of the tables are also available upon request at the address listed in the **ADDRESSES** section of this proposed rule. NOAA encourages all interested persons to review and submit public comments regarding the proposed conversion. The final rule would contain the actual conversion tables.

D. Definitions

1. Definitions for Terms That Apply System-Wide

NOAA proposes to revise the section that contains definitions of system-wide terms by: (1) Eliminating a term; (2) adding new terms; (3) updating some existing definitions, (4) consolidating redundant terms from the site-specific regulations; and (5) moving some site-specific terms to the general regulations. Section 922.3 (which would be renumbered as 922.11) would be expanded to include seventeen (17) additional terms and corresponding definitions. While many existing site-specific sanctuary regulations (subparts F through R) have distinct terms and corresponding definitions, several terms have identical or nearly identical definitions, and other terms have disparate definitions. To ensure consistent interpretation of like terms throughout the System, NOAA proposes to make several updates to definitions, as described below.

a. Eliminated Term

NOAA proposes to delete the term ''fish wastes'' from the general definitions because it is not used in any of the program regulations.

b. New Terms

NOAA proposes to define the terms ''abandoning'' and ''effective date'' in the general definitions section because those terms are used throughout the program regulations but are not defined.

In addition, NOAA proposes to add the term ''Washington Coast treaty tribe'' to the general definitions in section 922.11. The term was suggested as a result of consultation with the Olympic Coast NMS management plan review process. The new definition would specifically refer to any of the four tribes currently identified in the existing Olympic Coast NMS regulations and would be defined as ''the Hoh, Makah, or Quileute Indian Tribes or the Quinault Indian Nation.''

c. Terms Moved Without Change

The following terms and corresponding definitions would be moved to section 922.11 without change: ''clean'', ''cruise ship'', ''federal project'', ''lawful fishing'', ''lightering'', ''marine'', ''mineral'', ''National historic landmark'', ''oceangoing ship'', ''shunt'', ''State'', and ''subsistence use''.

d. Amended Definitions of Existing Terms

NOAA proposes to amend the definitions of some existing terms in the general definitions section 922.11.

The office reference would be updated for the definition of ''Director'', and the definitions, including statutory references, are clarified for the terms ''exclusive economic zone'', ''national marine sanctuary'', and ''regional fishery management council''.

NOAA also proposes to modify the following terms to address issues and limitations identified since NOAA first promulgated the regulations: ''benthic community'', ''conventional hook and line gear'', ''cultural resource'', ''historical resource'', ''Indian tribe'', ''injure'', ''person'', ''sanctuary quality'', ''sanctuary resource'', ''take or taking,'' ''tropical fish,'' and ''vessel.''

''Benthic community'' would be updated by adding ''sea/ocean/lake'' before ''bottom'' to reflect the appropriate descriptive term, depending on the sanctuary.

''Conventional hook and line gear'' would be updated by removing the phrase ''from aboard a vessel or'' from the definition, and replacing the descriptor ''hind- or electrically operated, hand-held or mounted'' with ''hand, electrically, or hydraulically operated, regardless of whether mounted'', and replacing the descriptor ''fishing apparatus'' with ''fishing gear''. These proposed changes would make the definition conform to common fishing practices (e.g., conventional hook and line fishing may occur from shore, from a bridge, etc.), and simplify

language describing the various fishing gear and methods. The spelling error would also be corrected. In addition, the definition would be revised to replace the term ''bottom longline'' with ''longline''. This proposed change would eliminate the word ''bottom'' from the definition. Currently the term ''conventional hook and line gear'' is used only in prohibitions of the Flower Garden Banks NMS (section 922.122(a)(7)–(10)) as an exception to the take of certain sanctuary resources. This change would clarify that the prohibition applies to all types of longlines in Flower Garden Banks NMS, and not just bottom longlines. NOAA notes that the existing definition of ''conventional hook and line gear'' applies only to ''fishing gear * * * composed of a single line terminated by a combination of sinkers and hooks or lures * * * '' Since longline is a single line fitted with a series of offshoot lines along its entire length, it does not fit within the definition of ''conventional hook and line gear''. By removing the word ''bottom'' from the definition, NOAA hopes to eliminate confusion. This proposed change would impact only the prohibitions of Flower Garden Banks NMS and make it consistent with current fishing practices at that site.

''Commercial fishing'' would be modified to include the phrase ''including any attempt to engage in such activity.'' The proposed modification is intended to clarify that the term ''commercial fishing'' does not only apply to activity that results in the sale or trade of fish, shellfish, algae or corals, but also applies to ''any attempt'' to sell or trade fish, shellfish, algae or corals for profit. NOAA strongly believes the proposed modification would make the definition of ''commercial fishing'' consistent with current interpretation under other statutes.

The terms ''cultural resources'' and ''historical resource'' would be modified by including the phrase, ''but not limited to''. In addition, for ''historical resource'', the term ''cultural resources'' is added to the list of examples. This update is intended to clarify that the examples of various resources listed in the regulations are not exhaustive, nor are they exclusive. The statutory citation for the National Historic Preservation Act is incorporated by reference in order to prevent delays associated with updating NOAA regulations should changes occur to the statute in the future.

The term ''fish'' would be updated with the current language used in the Florida Keys NMS regulations at 922.162, which is consistent with the definition of ''fish'' contained in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The applicable statutory reference is also inserted so that the source of the regulatory definition may be easily identified.

The term ''harmful matter'' would be modified by adding a period at the end of ''Sanctuary resources or qualities.'' The phrase ''including but not limited to'' is replaced with ''Such substances or combination of substances may include, but is not limited to''. The purposes of the two above mentioned changes are to improve readability and promote greater understanding.

The term ''Indian tribe'' found in the Olympic Coast NMS and Thunder Bay NMS regulations would be moved to the system-wide regulation, and would mirror the definition currently used in Executive Order 13175. Updating this definition does not result in any change from a management perspective with regard to either existing sanctuary. The purpose is to bring the definition in line with the updated language as required by Presidential directive.

NOAA proposes to update the definition of ''injure'' and clarify that the term encompasses short or long term adverse changes to any chemical, biological, or physical attribute, or viability of a ''sanctuary resource''; it would not be limited to acts that cause the loss or destruction of sanctuary resources. The proposed revision would also clarify that injury may be caused either directly or indirectly and that injury includes ''the impairment of a sanctuary resource service''. A resource service is a function performed by a sanctuary resource for the benefit of another sanctuary resource or the public (e.g., seagrass providing habitat and food for fish or a coral reef providing recreational opportunities for members of the public who enjoy snorkeling). This is consistent with current and past practices in handling cases where resources have been damaged, destroyed, or impaired. Adding the phrase, ''or the impairment of a sanctuary resource'' therefore does not change the types of cases or expand the pool of potential violations that are likely to be issued using this definition, because these damages typically do both; cause damage and impact the viability of the sanctuary resource and law enforcement officers already treat these cases consistently. Thus, the change reflects common practice in determining and assessing injuries under the NMSA and is, therefore, intended only as clarification.

NOAA proposes to update ''sanctuary quality'' and ''sanctuary resource'' by adding clarifying text (e.g. ''national marine'' inserted before ''sanctuary''), and in the case of sanctuary resource, the definition would complement that found in the NMSA and would include ''maritime heritage, cultural, archeological, and scientific'' resources. NOAA would also update the definitions by replacing ''the substratum of the area of the Sanctuary'' with ''waters of the sanctuary, the submerged lands of the sanctuary''. The term ''seabirds'' would be replaced with ''birds''. This is to account for the fact that, as with most migratory creatures, birds may transit through the sanctuary during the course of their life span. When birds—seabirds, migratory birds, or water fowl—transit through the sanctuary they become part of the sanctuary resources that fall under the protection of NOAA consistent with the NMSA. NOAA also proposes to incorporate the phrase, ''or parts or products thereof'' after ''any living or non-living resource of a national marine sanctuary * * *'' This was added to ensure that protected resources are not dismembered and removed. It does not change the intent of the original protections, but when the original regulations were written, it was not common to include the term of art ''or parts thereof'' in protective language, as is commonly the case today.

''Tropical fish'' would be updated by replacing the phrase ''for aquaria purposes'' with ''in the aquarium trade''. The proposed change makes grammatical correction and updates the terminology to ''aquarium trade'', which is currently used.

This revised definition of ''tropical fish'', however, would not apply to the Florida Keys NMS. NOAA intends to continue to maintain a site-specific definition of ''tropical fish'' in the Florida Keys NMS. The state has managed a fishery for marine life species, including ''tropical fish'' for many years. NOAA has recognized this in Florida Keys NMS site-specific regulations and has historically maintained a separate definition of ''tropical fish'' for the Florida Keys NMS. Section 922.162 incorporates the Florida Administrative Code, and would be modified consistent with the Florida Marine Life rule. The proposed definition would read: ''*Tropical fish* means any species included in 68B–42 of the Florida Administrative Code, or any part thereof.''

''Vessel'' would be modified to add at the end of the definition additional non-exhaustive list of examples taken from the Florida Keys NMS definition (e.g. ''the term would include, but would not be limited to * * *''). This clarification

would be useful for law enforcement purposes by providing additional guidance, but does not substantively change the original meaning of the term, which lacked additional examples.

e. Consolidated Terms for Definitions That Varied

NOAA proposes to adopt a single definition for the following three terms, and consolidate them into section 922.11: ''[stowed and] not available for immediate use'', ''motorized personal watercraft (MPWC)'', and ''traditional fishing''. Currently, there are two definitions for the term ''stowed and not available for immediate use'' and a separate definition for ''not available for immediate use''. There are also four different definitions, each, for the terms ''motorized personal watercraft'' and ''traditional fishing''.

Stowed and Not Available for Immediate Use

There are two nearly identical definitions of the term, ''stowed and not available for immediate use'' and a separate definition for ''not available for immediate use'' that apply to three sites (Channel Islands NMS, Florida Keys NMS, and Gray's Reef NMS). The operational part of each definition is identical, but the illustrations of what constitutes fishing gear being stowed and not available for immediate use differ among the various sites. The definition for Channel Islands NMS is the most comprehensive and is being proposed for all three sites with a slight clarification that the term applies to fishing gear. This proposed action would not change in meaning or application of the term for law enforcement purposes. The term, ''stowed and not available for immediate use'' would be defined as follows:

Stowed and not available for immediate use means fishing gear not readily accessible for immediate use, e.g., by being fishing gear securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

Motorized Personal Watercraft (MPWC)

NOAA proposes to adopt a definition for MPWC very similar to the current Monterey Bay NMS definition. The proposed definition slightly differs from Monterey Bay regulatory definition in two respects. First, the proposed definition has been enumerated in order to clearly show that NOAA has adopted an integrated three-part definition. Second, the design characteristics have been clarified in part 1 of the definition in order to better identify the vessels of concern to NOAA. The proposed definition would read as follows:

Motorized personal watercraft (MPWC) means (1) any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the motor of the vessel, in contrast to the conventional manner, where the operator stands or sits inside the vessel hull; (2) any vessel less than 20 feet in length overall as manufactured and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard's Maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183, except submarines; or (3) any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

NOAA proposes to adopt this definition of MPWC for all sanctuaries because it is the most comprehensive and rigorous of the various definitions used for other sanctuaries. This definition captures key elements of the operational definition adopted by Channel Islands NMS, Gulf of the Farallones NMS, and the Florida Keys NMS. However, it differs from those other sanctuary definitions by omitting reference to particular hull design, length, or propulsion system which could be rendered obsolete and ineffective over time due to the rapidly evolving MPWC design changes. Rather, the definition is progressive and is intended to cover a full range of existing (e.g., Kawasaki Corporation's Jet Ski line, jet bikes, hovercraft, air boats, and race boats) and future motorized personal watercraft that could create conflicts with other sanctuary users and pose a threat to sanctuary resources and qualities. The threat arises because the design features of MPWC (e.g., small size, shallow draft, instant thrust, and ''quick reflex'') increase the craft's maneuverability and allow riders to operate nearshore and access shallow water areas and water areas adjacent to rocky shores, reefs, and remote beaches that would commonly pose a hazard to conventional craft operating at comparable speeds. These areas are also often used by marine mammals and sea birds as breeding, nursing, or resting areas. The marine mammals and sea birds are often either unable to avoid these craft or are frequently alarmed enough to significantly modify their behavior such as cessation of feeding or abandonment of young. MPWC also tend to operate in traditional surfing locations and have historically created conflicts with other users. Of the various definitions, the Monterey Bay NMS regulatory definition best identifies the various vessels of concern to NOAA while avoiding an excessively complicated and lengthy definition for MPWC. NOAA's rationale and authority for adopting the Monterey Bay National Marine Sanctuary's is further explained in 73 FR 70488, 70499–70501, Nov. 20, 2008 and is hereby incorporated in this notice.

NOAA believes the proposed definition contains an element of flexibility so that should one prong become obsolete by design innovation, the remaining two prongs would still apply and preserve the protection intended by the regulations. Additionally, because the proposed definition is consistent with the definition applied in national parks, NOAA does not foresee enforcement problems in sanctuaries located adjacent to areas managed by the National Park Service. NOAA also believes the proposed definition would allow for improved enforcement at other sites throughout the System, as it has in Monterey Bay NMS. NOAA has prepared an environmental assessment in conjunction with this proposed change.

Traditional Fishing

There are three different definitions of the term ''traditional fishing,'' adopted by Florida Keys NMS, Stellwagen Bank NMS, and Thunder Bay NMS. The only difference among these regulations is the historical reference point. Some definitions refer to the effective date of Sanctuary designation, whereas others refer to fishing activities specifically identified in the environmental impact statement and management plan for the sanctuary. To avoid confusion, NOAA proposes to consolidate the existing definitions.

In formulating a single definition of ''traditional fishing'', NOAA recognizes that Florida Keys NMS coordinates with the State of Florida in the enforcement of prohibited activities and must also implement the Florida Administrative Code among other competing interests. Therefore, it is important to distinguish activities that were customarily conducted prior to the designation of any sanctuary, and those that were contemplated in the original designation and environmental documents of the designation. NOAA believes this distinction would be important for all sanctuaries, and not just Florida Keys NMS. Thus, NOAA proposes to adopt the Florida Keys NMS definition for ''traditional fishing'' for all sanctuaries using this term, modified as follows:

Traditional fishing means those commercial or recreational activities that were customarily conducted within the Sanctuary before its designation, as identified in the Sanctuary's original final environmental impact statement and

management plan. For Thunder Bay National Marine Sanctuary and Underwater Preserve, traditional fishing means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the sanctuary prior to its designation.

NOAA also recognizes that subsistence fishing may occur at other sites such as Olympic Coast NMS and National Marine Sanctuary of American Samoa, however, we believe that these activities are already covered by the existing definition of subsistence use. Thus, we do not believe the proposed changes alter any previously held rights in these areas or alter fishing regulations in any manner.

f. Consolidated Terms With Identical or Nearly Identical Definitions

In addition to the consolidated definitions above, NOAA has identified other minor differences in a few other definitions that we propose to consolidate in the system-wide regulations. NOAA proposes minor changes to the following four definitions:

Deserting

The term ''deserting'' would be moved from Monterey Bay and Gulf of the Farallones national marine sanctuaries regulations to the new definition section at 922.11, and amended to include the following descriptors, ''wrecked, junked, or in a substantially dismantled condition.'' These descriptors are intended to provide guidance to law enforcement in applying the regulations, and assist the public in better understanding the regulations. The term is currently used only in the prohibition for these two sites. While adding the descriptors ''wrecked, junked, or in a substantially dismantled condition'' could be interpreted to expand the universe of activities that constitute deserting a vessel, NOAA's intent is to provide additional guidance to persons that may identify with these terms in addition to the existing examples of ''aground or adrift.''

Graywater

NOAA proposes to incorporate into the sanctuary program regulations the definition of ''graywater'' established under section 312 of the Federal Water Pollution Control Act (FWPCA, 33 U.S.C. 1322 *et seq.*). Section 312 (a)(11) of the FWPCA defines ''graywater'' to include galley, bath and shower water. Many site specific regulations already prohibit the discharge of galley, bath and shower water. Therefore, NOAA believes it improves the definition to explicitly refer to the FWPCA, which is the statutory source of the definition.

Seagrass

''Seagrass'' would be modified only by consolidating all the examples, without change, from the sanctuaries that list them following the definition.

Take or Taking

The definition of ''Take or taking'' would be reformatted and updated. NOAA proposes to keep the second half of the existing definition intact with some modifications. Specifically, the types of resources protected would not be limited by the regulations. Currently, the definition of ''take or taking'' refers to the protection of marine mammals, sea turtles, and seabirds. The regulations were never intended to only protect these three classes of sanctuary resources. The three classes of sanctuary resources have been replaced with the broader term ''sanctuary resources''. This proposed change is intended to clarify that any living or non-living resource of a national marine sanctuary is protected as contemplated by the NMSA. The proposed definition would also incorporate by reference the Endangered Species Act (16 U.S.C. 1531 *et seq.* (ESA)), the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.* (MMPA)) and the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.* (MBTA)). Eight sanctuaries (Channel Islands NMS, Gulf of the Farallones NMS, Cordell Bank NMS, Monterey Bay NMS, Stellwagen Bank NMS, Olympic Coast NMS, Florida Keys NMS, and Hawaiian islands humpback Whale NMS) currently incorporate these statutes in their site-specific regulations. As such, the proposed change serves as a consolidation of those regulations. Instead of crafting a separate definition of ''take or taking'' with respect to the sanctuary System, NOAA believes it would be most helpful for enforcement personnel to apply a consistent interpretation of the three statutes. Law enforcement would be the best and most well versed on any changes that occur to these definitions over time. By incorporating these statutes into the national definition by reference, NOAA would avoid unnecessary delays in making the statutory updates to ONMS regulations.

g. Other Terms That Would Remain in Site-Specific Regulations

There are several sites that will retain some site-specific terms, such as the Florida Keys NMS and Olympic Coast NMS, as mentioned above. NOAA also notes that the newly adopted definition of ''live rock'' in the NMS of American Samoa will also be separate and distinct from a long-standing definition of ''live rock'' in the Florida Keys NMS. NOAA intends to continue to maintain a site-specific definition of ''live rock'' in the NMS of American Samoa. This is because the definition used in that site incorporates both the American Samoan code (which specifically includes basalt rock under Title 24, Chapter 9), and also adopts the term from the Western Pacific Regional Fisheries Management Council's Coral reef Ecosystems Fishery Management Plan (69 FR 8336, Feb. 24, 2004). Similarly, the Florida Keys NMS definition is derived from the FNMSPA. For these reasons, NOAA will recognize and maintain a separate definition for this term in both the NMS of American Samoa and in the Florida Keys NMS.

D. Permitting Regulations

1. Background

NOAA proposes to update and consolidate its sanctuary permitting procedures and requirements, which would be set forth in a new section named ''Subpart D—National Marine Sanctuary Permitting.'' Currently, ONMS permit review criteria and procedures are located in several different parts of the regulations: 922.48 National Marine Sanctuary permits—application procedures and issuance criteria; 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity; 922.50 Appeals of administrative action; and in subparts F through R in sanctuary-specific regulations.

In general, the proposed rule would consolidate permitting regulations, and update and clarify ONMS permitting authority. Specifically, the proposed action would:

a. Consolidate and amend general permit types (922.30);

b. Add a new section on the issuance of special use permits (922.31);

c. Clarify application requirements and procedures (922.32);

d. Consolidate and amend permit review criteria (922.33);

e. Clarify permit amendment procedures (922.34);

f. Add a new section on the imposition of special use permit fees (922.35);

g. Clarify authorizations authority (922.36); and

h. Update and amend the appeals processes (922.37).

The proposed rule would: eliminate redundancy, thereby significantly shortening site-specific permitting regulations; make permitting criteria

and procedures uniform across sites, to the extent appropriate; resolve unnecessary inconsistencies; and update and clarify regulations.

2. General Permit Categories

ONMS has three ways by which it may authorize otherwise prohibited activities: general permits, special use permits, and authorizations. General permits are divided into several categories that correspond with the primary purpose of the proposed activity. NOAA proposes to consolidate all general permit categories into one section (922.30) and provide a single description of each permit category. NOAA proposes to eliminate some site-specific general permit categories that can adequately be addressed in one or more of the general permit categories. NOAA also proposes to move some site-specific general permit categories into this consolidated section.

Most sanctuary regulations have at least three categories of general permits: (1) Management; (2) education; and (3) research. However, the language describing these categories is not consistent among the sites. NOAA proposes to make these three general permit categories applicable to all sanctuaries, consolidate these categories into a single section, and provide a single description of each permit category. System-wide, this change will slightly expand the activities eligible for a permit. All sanctuary regulations currently allow the issuance of a general permit for research. *Monitor* National Marine Sanctuary (*Monitor* NMS) does not currently allow the issuance of general permits for education and management, so these would be new activities for *Monitor* NMS.

Other categories of general permits at some sanctuaries include: salvage associated with an air or marine casualty or of a historic shipwreck; restoration of natural habitats, populations, or ecological processes; and response to the imminent risk of a sanctuary resource injury. These activities will be considered under a category determined appropriate for the proposed action (e.g., management or research). Sanctuary general permits for management are commonly used for activities that further the management or resource protection objectives identified at a particular site. Thus, proposed restoration and incident response activities would typically qualify for a general permit for management. Historic shipwreck salvage may qualify for a general permit for research or management depending on the specific proposed action. Salvage associated with an air or marine casualty would likely qualify for a general permit for management. Thus, the activity of salvage would continue to qualify for a general permit, although it would no longer be a separate category of general permit.

In addition, some sanctuaries have site-specific categories of general permits. Four site-specific categories of general permits would be moved to this section, but would only apply to the specified sanctuary. The four site-specific general permit categories which will be moved into the general permit section are: jade removal in Monterey Bay NMS; tribal self-determination in Olympic Coast NMS; maritime heritage in Florida Keys NMS; and otherwise furthering the purposes of the Florida Keys NMS. It should be noted that the tribal self-determination permit category for Olympic Coast NMS is specific to activities that promote or enhance treaty right activities. Activities necessary for the exercise of treaty rights are exempt from Olympic Coast NMS regulatory prohibitions, and thus do not require a permit.

3. Review Criteria

NOAA proposes to consolidate and amend permit review factors or criteria. All sanctuaries with permitting authority currently have a list of factors or criteria that the Director must consider in determining whether to issue a permit. The list of factors or criteria considered by the Director is not consistent across all sites, nor is the regulatory text for the same factor consistent. Additionally, when determining eligibility for a permit, sanctuaries vary as to whether site-specific factors or criteria must be met or simply considered.

To achieve greater consistency, NOAA proposes a single list of nine review criteria. Eight criteria would be applicable to all sanctuaries, while one would be unique to Olympic Coast NMS (the activity as proposed shall not adversely affect Washington Coast treaty tribes). NOAA would make the review criteria affirmative findings that must be met before the Director may issue a permit. This approach is consistent with the approach taken under the existing regulations for Florida Keys and Gray's Reef NMS. This approach is also consistent with the common practice employed by the Director at the other sites within the system.

The Olympic Coast NMS site-specific permitting regulations presently include a permit review criterion that the Director must consider the impacts on tribes in the evaluation of permit applications. In order to retain the intent while changing the criterion into an affirmative finding consistent with the other general permit criteria, NOAA proposes to modify the criterion to require that proposed permit activities shall not adversely affect Washington Coast treaty tribes.

NOAA also proposes to eliminate site-specific impact thresholds for permit issuance. In addition to review factors or criteria, four sites (National Marine Sanctuary of American Samoa, Monterey Bay, Stellwagen Bank and Olympic Coast national marine sanctuaries) have a regulatory impact threshold that must be satisfied for a permit to be issued. Of these sanctuaries, only Monterey Bay and Stellwagen Bank have the same impact threshold. The three different types of impact thresholds do not provide clear and well-defined limits, as was originally intended. Without clear limits, the determination as to whether an action meets or exceeds a threshold can be murky. NOAA believes that this defeats the purpose for which thresholds were originally established. These site-specific impact thresholds would be eliminated in favor of the new review criteria stated as affirmative findings. The review criteria specific to the acceptable level of impact to sanctuary resources and qualities would be: ''the expected end value of the activity to the furtherance of the national marine sanctuary goals and purposes must outweigh any potential adverse impacts on sanctuary resources and qualities.''

NOAA believes that establishing a consistent set of regulatory review criteria written as affirmative findings and eliminating site-specific impact caps would enable better management practices across the System. In theory, permit reviewers for nine sites would now be required to make affirmative findings, rather than being allowed merely to consider the review criteria. However, in practice, this would not be new. The four sites with impact thresholds are among the nine that will now have affirmative findings included as part of their permit issuance procedures.

4. Appeals

NOAA proposes to amend the administrative process for appealing sanctuary permit decisions. First, NOAA proposes that only permit applicants and permittees would be allowed to file an administrative appeal of a permit decision. Currently, ''any interested party'' can appeal permitting decisions for *Monitor,* Channel Islands, Gulf of the Farallones, Gray's Reef, National Marine Sanctuary of American Samoa, and Cordell Bank national

marine sanctuaries. For the six other sanctuaries with permitting authority, only permit applicants and permittees can appeal. NOAA has researched the history of the regulations governing administrative appeal of permitting decisions and there appears to be no identifiable reason for this inconsistency. Moreover, NOAA is unaware of any appeal that has ever been filed by a person other than a permittee or applicant. The lack of a broader appeal base has never been contested in the other six sanctuaries that limit the appeal pool only to applicants and permittees. For all the reasons set forth above, to eliminate inconsistencies, and to make this regulation apply more uniformly, NOAA proposes to restrict the potential appellants to permittees and permit applicants under a new section 922.37 and make the regulations applicable to all sites.

NOAA also proposes to eliminate the requirement that the Assistant Administrator (AA) hold an informal hearing for administrative appeals for the *Monitor* NMS. All other sanctuary regulations provide the AA with discretion to determine whether an informal hearing is necessary. This level of discretion would now be extended to the AA with regard to the *Monitor* NMS.

5. Special Use Permits and Fees

NOAA proposes to add a new section to the system-wide permit regulations that addresses the authority of the Secretary of Commerce (delegated to the ONMS Director) to issue special use permits (SUPs) as established by Section 310 of the NMSA. Although all sanctuaries currently have authority to issue SUPs, the only sanctuary that currently has regulations that specifically provide for them is the Florida Keys NMS. NOAA proposes to use the existing Florida Keys NMS regulations (922.166(d)) as a basis for the new system-wide regulation.

SUPs can be used to authorize the conduct of specific activities in a sanctuary if such authorization is necessary (1) to establish conditions of access to and use of any sanctuary resource or (2) to promote public use and understanding of a sanctuary resource. Examples of activities that qualify for a SUP include continued presence of submarine cables beneath or on the seabed of a sanctuary, disposal of cremated human remains in a sanctuary, and commercial operation of aircraft below the minimum altitude in restricted zones of a sanctuary. Other activities that qualify for a SUP are set forth in the **Federal Register** (71 FR 4898; Jan 30, 2006). Categories of SUPs may also be changed through public notice.

The NMSA allows the assessment and collection of fees for the conduct of any activity under a SUP. Fees would be addressed in the new section 922.35 of these regulations. The fees collected could be used to recover the administrative costs of issuing the permit, the cost of implementing the permit, and the fair market value of the use of sanctuary resources.

6. Application Requirements and Amendment Procedures

NOAA proposes to make minor clarifications to the section on application requirements and procedures. These requirements are for the most part unchanged, with the exception of revising the section to read more clearly. The proposed changes would clarify that the Director may refuse to further consider an incomplete application. Applications are deemed incomplete if an applicant fails to submit required or requested information, pay outstanding penalties, or comply with any permit previously issued to the applicant. In addition, the language in new section 922.34 governing permit amendments has been revised to clarify that NOAA does not issue ''renewal'' permits, but has a longstanding practice of ''amending'' the expiration dates of existing permits. While NOAA is not proposing to set a deadline for submission of amendments before permit expiration, we generally recognize that a reasonable time frame to conduct adequate review would be 30 days prior to the date of expiration, with some exceptions, such as when an environmental assessment or environmental impact statement would be required or when the scope of the proposed action or its impacts are significantly different from the original proposal.

7. Authorizations

ONMS regulations currently at 922.49 provide the Director with authority to allow an otherwise prohibited activity ''if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization.'' This form of approval has become known as an ''authorization'' and is used by six sanctuaries: Flower Garden Banks, Monterey Bay, Stellwagen Bank, Olympic Coast, Florida Keys, and Thunder Bay. For the most part, these are sites that significantly overlap state waters or other federal agencies' jurisdictions, or that have a significant amount of coastline adjacent to the site. Given this, these sites frequently host activities that require multiple state or federal permits. The authorization process was intended to streamline regulatory requirements by reducing the need for multiple permits.

NOAA proposes to remove unclear and outdated language from section 922.49, revise the language, and renumber the regulation as section 922.36. NOAA is also proposing to require that the Director consider the review criteria at 922.33(a)(1)–(7) in evaluating authorization requests. It is already common practice to use the permit review criteria as guidance in deciding whether to issue authorizations. The regulations at 922.36(c)(2) would make the consideration of the permit review criteria by the Director mandatory. In addition, section 922.36(c)(3)(iii) would clarify that the Director has authority to issue an authorization containing mandatory terms and conditions.

E. Other Conforming and Administrative Changes

—Under 922.163(f), outdated references would be removed

—Under 922.166, references are proposed to be updated from ''historical'' to ''maritime heritage'' resources, and a correction is made to appropriately update the state of Florida and Florida Keys NMS ''Submerged Cultural Resource (SCR)'' programmatic agreement to simply, Programmatic Agreement, or ''PA''

—Address corrections are made for several permitting sections, as sanctuary offices have changed or moved (for Stellwagen Banks NMS, Olympic Coast NMS, and Florida Keys NMS).

—922.194 is no longer applicable, and therefore NOAA proposes to remove the text and reserve the section.

As an aid to the reader in understanding the proposed changes, we include the following table of specific changes:

Note: The revised geographic coordinates discussed in this notice can be viewed and downloaded from *http://sanctuaries.noaa.gov/library/alldocs.html,* or obtained upon request at the address listed in the **ADDRESSES** section of this proposed rule.

Current regulations	Proposed change
Subpart A	Revised to include amended text from consolidated from the existing Subparts A, D and E–R.
Sec. 922.1	Revised to include amended text consolidated from the existing sections 922.1, 922.4; and subpart E, section 922.40.
Sec. 922.2	Revised.
Sec. 922.3	Renumbered 922.11 and revised to add some terms from the site-specific regulations (F–R), delete some outmoded terms, rename some terms, and amend the definition of some terms.
Sec. 922.4	Consolidated into newly amended subpart A. Renumbered Sec. 922.1 and revised.
Subpart B	Reserved.
Sec. 922.10	Consolidated into newly amended subpart A. Renumbered Sec. 922.12 and revised.
Subpart C	Reserved.
Sec. 922.20, 922.21, 922.23, 922.24, and 922.25.	Removed.
Sec. 922.22	Removed paragraph (a). Paragraph (b) consolidated into newly amended subpart A. Renumbered Sec. 922.3 and revised.
Subpart D	Revised and Renamed ''Subpart D—National Marine Sanctuary Permits''.
Sec. 922.30 and 922.31	Removed.
Subpart E	Reserved.
Sec. 922.40	Consolidated into newly amended subpart A. Renumbered Sec. 922.1 and revised.
Sec. 922.41	Consolidated into newly amended subpart A. Renumbered Sec. 922.4. No other changes made to text.
Sec. 922.42	Consolidated into newly amended subpart A. Renumbered Sec. 922.5 and revised.
Sec. 922.43	Consolidated into newly amended subpart A. Renumbered Sec. 922.6. No other changes made.
Sec. 922.44	Consolidated into newly amended subpart A. Renumbered Sec. 922.7 and internal cross references updated. No other changes made.
Sec. 922.45	Consolidated into newly amended subpart A. Renumbered Sec. 922.8 and revised.
Sec. 922.46	Consolidated into newly amended subpart A. Renumbered Sec. 922.9.
Sec. 922.47	Paragraph (a) consolidated into newly amended subpart A. Renumbered Sec. 922.10. Paragraph B removed.
Sec. 922.48 through 922.50	Consolidated into newly amended subpart D. Renumbered Sec. 922.30 through 922.37 and revised.
Subpart F	Retained.
Sec. 922.60	Revised areal estimate and geographic coordinates.
Sec. 922.62	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart G	Retained.
Sec. 922.70	Updated abbreviation of areal estimate.
Sec. 922.71	Reserved. Entire section revised and consolidated into newly amended subpart A, Sec. 922.11.
Sec. 922.74	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart H	Retained.
Sec. 922.80	Updated abbreviation of areal estimate.
Sec. 922.81	Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. No changes made to terms retained in this section.
Sec. 922.82	Updated internal cross reference in paragraph (c).
Sec. 922.83	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart I	Retained.
Sec. 922.90	Updated abbreviation of areal estimate.
Sec. 922.91	Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. No changes made to terms retained in this section.
Sec. 922.92	Updated internal cross reference in paragraph (a).
Sec. 922.93	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart J	Retained.
Sec. 922.101	Revised areal estimate and geographic coordinates.
Sec. 922.102	Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. No changes made to terms retained in this section.
Sec. 922.103	Update internal cross reference in paragraph (e)
Sec. 922.107	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart K	Retained.
Sec. 922.110	Updated abbreviation of areal estimate.
Sec. 922.111	Reserved. Entire section consolidated into newly amended subpart A, Sec. 922.11.
Sec. 922.112	Updated internal cross reference in paragraph (b).
Sec. 922.113	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart L	Retained.
Sec. 922.120	Revised areal estimate.
Sec. 922.121	Revised consistent with proposed changes.
Sec. 922.122	Paragraph (a)(4) updated by adding ''seabed or submerged lands''. Paragraph (a)(7) revised by replacing ''bottom longlines'' with ''longlines''. Updated internal cross reference in paragraphs (f), (g) and (h) to conform to proposed changes.

Current regulations	Proposed change
Sec. 922.123	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes. Address updated.
Appendix A	Revised geographic coordinates.
Subpart M	Retained.
Sec. 922.130	Updated abbreviation of areal estimate.
Sec. 922.131	Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. The abbreviation of the areal estimate for Davidson Seamount Management Zone has been updated to conform to proposed changes. No changes made to terms retained in this section.
Sec. 922.132	Updated internal cross reference in paragraphs (d), (e) and (f) to conform to proposed changes.
Sec. 922.133	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart N	Retained.
Sec. 922.140	Updated abbreviation of areal estimate, and revised geographic coordinates.
Sec. 922.141	Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. Updated cross reference in term retained in this section.
Sec. 922.142	Paragraph (a)(3) updated by adding ''seabed or submerged lands''. Updated internal cross reference in paragraphs (d), (e) and (f) to conform to proposed changes.
Sec. 922.143	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes. Address updated.
Appendix A	Revised geographic coordinates.
Subpart O	Retained.
Sec. 922.150	Revised areal estimate.
Sec. 922.151	Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. No changes made to terms retained in this section.
Sec. 922.152	Paragraph (a)(3) updated by adding ''seabed or submerged lands''. Updated internal cross reference in paragraphs (e), (g) and (h) to conform to proposed changes.
Sec. 922.153	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes. Address updated.
Appendix A	Revised geographic coordinates.
Subpart P	Retained.
Sec. 922.161	Revised areal estimate.
Sec. 922.162	Revised and consolidated into Subpart A, Sec. 922.11 to conform to proposed changes. One administrative change is made to a single term retained in this section.
Sec. 922.163	Paragraph (a)(3) updated by adding ''seabed or submerged lands''. Updated internal cross reference in paragraphs (b), (c) and (f) to conform to proposed changes. Removed outdated reference in paragraph (f) which provided an exception for discharge of sewage.
Sec. 922.164	Updated internal cross reference in paragraph (e)(1)(iii).
Sec. 922.166	Revised and consolidated into newly amended subpart D. The remaining language updated by replacing ''historical'' with ''maritime heritage'' resources and ''Submerged Cultural Resource (SCR) programmatic agreement is replaced with ''Programmatic Agreement'' or ''PA''.
Sec. 922.167	Updated contact phone number.
Appendix I, II, IV through VII	Revised geographic coordinates.
Subpart Q	
Sec. 922.181	Areal estimate provided.
Sec. 922.182	Revised definition of ''Alteration of the seabed''. Updated internal cross reference in paragraphs (b).
Appendix A	Revised geographic coordinates.
Subpart R	
Sec. 922.190	Revised areal estimate.
Sec. 922.191	Definition of ''traditional fishing'' removed and consolidated into Subpart A, Sec. 922.11 to conform to proposed changes. No changes made to terms retained in this section.
Sec. 922.194	Removed/Reserved.
Sec. 922.195	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.

III. Request for Comments

NOAA requests comments on this proposed rule. In particular, NOAA seeks to determine whether the proposed changes effectively streamline or otherwise improve the regulations and requests input on the preliminary questions listed below. These questions are not intended to be exhaustive. You may raise other issues or make suggestions unrelated to these questions if you believe it would help NOAA develop better regulations. In addition, NOAA invites you to provide comments on how to make the regulations easier to understand.

(1) Has NOAA identified those sections of the regulations that can and should be changed, streamlined, consolidated, or removed?

(2) Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulations easier to understand?

(3) Are there additional regulations beyond those that NOAA proposes to change in this action that have become unnecessary and could be amended or withdrawn without impairing NOAA's sanctuary regulatory program?

(4) Are there additional regulations within the sanctuary program regulations that NOAA has not identified in this document as proposed changes, and that have become outdated? If so, how can they be modernized to better accomplish their regulatory objectives?

(5) Has NOAA efficaciously identified and made proposed amendments to the regulations to improve effectiveness? Are there additional regulations that are still necessary, but that have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(6) Are there regulations that are working well that can be expanded or used as a model to fill gaps in sanctuary regulatory programs?

(7) Are the requirements in the regulations clearly stated? Do the regulations contain technical language or jargon that is not clear?

IV. Classification

A. National Environmental Policy Act

This proposed rule contains both technical and substantive changes to ONMS regulations. None of the proposed changes are expected to have significant environmental impacts as defined in the regulations implementing the National Environmental Policy Act. However, NOAA is preparing a draft environmental assessment to analyze the potential environmental impacts of this proposed rulemaking and will make that analysis available for public comment. Copies will be made available at the address and Web site listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on this proposed rule will be published in the final environmental assessment and preamble to the final rule.

B. Executive Orders 12866 and 13563

This proposed rule has been determined to not be significant within the meaning of Executive Order 12866. Further, this initiative is part of NOAA's effort to carry out the President's directive under Executive Order 13563 for retrospective regulatory review.

C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule was developed after consultation and collaboration with representatives from the Makah, Hoh, and Quileute Indian Tribes and the Quinault Indian Nation through their membership on the Olympic Coast Intergovernmental Policy Council (IPC) and the Olympic Coast NMS Advisory Council. NOAA has represented to the IPC that this regulatory action will not significantly change existing regulations, and may actually improve tribal input on permitting actions conducted in or adjacent to the Olympic Coast NMS. The IPC and tribal government representatives on the Olympic Coast NMS Advisory Council were active participants in a more significant rulemaking conducted in association with the management plan review and regulatory update to the Olympic Coast NMS regulations. The language that NOAA adopted, through extensive public participation and government to government consultation with the tribes, has been fully incorporated without change in the regulatory language reflected within this rule.

The new changes proposed include adding a defined term ''Washington Coast treaty tribe'', moving the tribal self-determination permit category to the national permitting regulations, modifying a permit review criterion to require that permitted activities shall not have an adverse effect on Washington Coast treaty tribes, and adding the consideration of all permit review criteria (including the effect of the activity on tribes) to the authorizations procedures.

NOAA proposes to add the term ''Washington Coast treaty tribe'' to the general definitions in section 922.11. The term was suggested as a result of consultation with the Olympic Coast NMS management plan review process, and therefore it is not anticipated there will be any objection to this new term. The new definition would specifically refer to any of the four tribes currently identified in the existing Olympic Coast NMS regulations and would be defined as ''the Hoh, Makah, or Quileute Indian Tribes or the Quinault Indian Nation.''

For Olympic Coast NMS specifically, permits that further tribal self-determination are retained, without change from the recent regulatory process. NOAA proposes, however, to move them to the new permitting section under subpart D, without change. The permit category would continue to read: ''promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights or the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of a tribal member.''

The permit review consideration of the impacts of permitted activities on tribes would now require permit reviewers to report an affirmative finding that permitted activities would not adversely affect Washington Coast treaty tribes. This increases protection of the Washington Coast treaty tribes when compared to existing regulations that requires permit reviewers to only ''consider'' impacts to tribes.

NOAA also proposes to eliminate the Olympic Coast NMS site-specific impact threshold, which establishes that permitted activities must not ''substantially injure'' sanctuary resources and qualities. The impact threshold is replaced by nine (9) affirmative findings as discussed in the preamble to this proposed rule (section II.D.3., above). Among the proposed affirmative findings, however, ONMS finds that the Olympic Coast NMS unique finding of ''will not substantially injure'' would be adequately captured in the findings that the activity must be (1) conducted in manner compatible with the primary objective of resource protection, (4) the end value to the goals and objectives of the sanctuary outweighs potential adverse impacts, and (9) the activity does not adversely affect Washington Coast treaty tribes. As stated above, NOAA believes the removal of the Olympic Coast NMS ''substantial injury'' affirmative finding has a negligible overall impact to permit reviews as the threshold is rendered unnecessary by the list of nine review criteria written as affirmative findings. NOAA believes that this change should pose no overall impact to tribal interests with regard to permitting activities.

NOAA believes the proposed changes to the authorization review criteria increase protections for tribal interests. Currently the regulations do not require a permit reviewer to consider tribal interests when issuing an authorization. With the proposed change, tribal protections are increased to a mandatory consideration of whether activity adversely affects Washington Coast treaty tribes. Therefore, the proposed action would further increase protections for tribal consideration and protection for authorizations.

Last, and unrelated to the Olympic Coast NMS or Washington Coast treaty tribes, NOAA proposes to consolidate the definitions for the term ''traditional fishing''. While the definition should not impact Olympic Coast tribes, we note in the preamble discussion that the revised definition incorporates the terms ''subsistence fishing'' that is currently used in the Thunder Bay NMS regulations. We also note that we recognize subsistence fishing may occur at other sites such as Olympic Coast NMS and National Marine Sanctuary of American Samoa. However, we believe that these activities are already covered by the existing definition of subsistence use. Therefore we do not believe the proposed changes alter any previous rights held in these areas or alter fishing regulations in any manner.

D. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism

implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

E. Paperwork Reduction Act

This proposed rule does not create any new or revisions to the existing information collection requirement that was approved by OMB (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (PRA).

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.

F. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that the proposed changes are predominantly administrative in nature and generally would not alter substantive legal obligations for the regulated community. Specifically:

• Moving current sections of the regulations to different subparts and revising text as proposed by this rule would not substantively change the effect or impact of the regulations;

• Making the technical corrections to citations and obsolete sections of the regulations as proposed by this rule would not substantively change the effect or impact of the regulations;

• Amending the definitions of ''stowed and not available for immediate use'' and ''traditional fishing'' to be uniform among the sanctuaries does not impact small entities because the proposed definitions are identical or substantially similar to the definitions currently used for managing sanctuary resources under ONMS regulations. Clarifying and codifying these definitions does not change the obligations of small business operators significantly because in sanctuaries where these activities occur regularly, the current definitions are identical or substantially similar to the proposed definitions. Thus, amending the definitions to standardize them among the various sanctuaries is not expected to substantially alter the legal obligations of small businesses;

• Amending the term ''motorized personal watercraft'' would reconcile several definitions to create one uniform definition for all sanctuaries. The revision is intended make the term more clearly understood and reduce ambiguity for law enforcement purposes. This regulatory change is not expected to affect small businesses because they are already complying with existing restrictions on MPWC use, and the proposed definition does not impose new or substantially alter restrictions in any sanctuary where motorized personal watercraft activity is currently regulated;

• Amending and consolidating the permitting regulations from many site-specific regulations to a single subpart does not substantively change the requirements to apply for permits, nor does it change the burden on applicants who wish to apply for permits. Therefore, these changes should not alter the current operations of small businesses, and may actually improve ease of applying for permits by removing inconsistencies between the sanctuaries. The only substantive change in the permitting sections is the proposal to change the appeal section to limit the pool of appellants of a permit decision, as discussed in section II.D.4 of the preamble to this proposed rule. NOAA has researched the history of this regulation and to date it has remained unutilized in the six sanctuaries that have a broad appellant pool of ''any interested party.'' NOAA does not anticipate that limiting the appellant pool would impact small businesses, and NOAA believes the change would provide consistency within the regulations across all sanctuaries. Small businesses that apply for permits may actually benefit from this proposed change because it improves transparency and predictability for applicants. Therefore, these changes should not impact the current operations of small business operators, and may improve ease of applying for permits by removing inconsistencies and confusion that might otherwise occur.

Because the proposed changes are predominantly administrative in nature, they do not generally alter the rights and responsibilities of the regulated community. The one proposed substantive change is not expected to have a significant impact on a substantial number of small business entities because it is eliminating a provision that has never been used previously. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Amendments, Appeals, Appellant, Application requirements, Authorizations, Definitions, Designation, Environmental protection, Marine resources, Motorized personal watercraft, Natural resources, Permitting, Permit procedures, Prohibited activities, Special use permit, Stowed and not available for immediate use, Resources, Research, Traditional fishing, Water resources.

David M. Kennedy,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, NOAA proposes to amend 15 CFR part 922 as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Revise part 922 Subpart A to read as follows:

Subpart A—General and Regulations of General Applicability

Sec.
922.1 Purposes and applicability of the regulations.
922.2 Mission, goal, and special policies.
922.3 Issuance of regulations for fishing.
922.4 Boundaries.
922.5 Allowed activities.
922.6 Prohibited or otherwise regulated activities.
922.7 Emergency regulations.
922.8 Penalties.
922.9 Response costs and damages.
922.10 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.
922.11 Definitions.
922.12 Site Evaluation List (SEL).

Subpart A—General and Regulations of General Applicability

§ 922.1 Purposes and applicability of the regulations.

(a) The purposes of this part are:

(1) To implement title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et seq.,* also known as the National Marine Sanctuaries Act (NMSA or Act)); and

(2) To implement the designations of the national marine sanctuaries, for which site specific regulations appear in subparts F through R, by regulating activities affecting them, consistent with their respective terms of designation, in order to protect, restore, preserve and manage and thereby ensure the health,

integrity and continued availability of the conservation, recreational, ecological, historical, scientific, educational, cultural, archeological and aesthetic resources and qualities of these areas.

(b) The regulations of this part are binding on any person subject to the jurisdiction of the United States. Designation of a national marine sanctuary beyond the U.S. territorial sea does not constitute any claim to territorial jurisdiction on the part of the United States. The regulations of this part shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation of this part shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with:

(1) Generally recognized principles of international law;

(2) An agreement between the United States and the foreign state of which the person is a citizen; or

(3) An agreement between the United States and the flag state of the foreign vessel, if the person is a crew member of the vessel.

(c) Unless noted otherwise, the regulations in Subparts A and D apply to all national marine sanctuaries immediately upon designation.

§ 922.2 Mission, goal, and special policies.

(a) In accordance with the standards set forth in the Act, the mission of the Office of National Marine Sanctuaries (Office) is to identify, designate, protect, restore, and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or aesthetic resources and qualities.

(b) The goal of the Office is to carry out the mission in a manner consistent with the purposes and policies of the Act (16 U.S.C. 1431(b));

(c) Management efforts will be coordinated to the extent practicable with other countries managing marine protected areas;

(d) Program regulations, policies, standards, guidelines, and procedures under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.,* the Archeological and Historical Preservation Act of 1974, 16 U.S.C. 469 *et seq.,* and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa *et seq.* The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated national marine sanctuaries. The management of historical resources under the authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR part 7) and other relevant Federal regulations. The Secretary of the Interior's Standards and Guidelines for Archeology may also be consulted for guidance. These guidelines are available from the Office of Ocean and Coastal Resource Management or from the Office at (301) 713–3125.

§ 922.3 Issuance of regulations for fishing.

If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional Fishery Management Council(s). The appropriate Regional Fishery Management Council, shall have one hundred and eighty (180) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishing regulations for the area within the exclusive economic zone and submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Any fishing activities not proposed for regulation under section 304(a)(5) of the Act may be listed in the draft Sanctuary designation document as being subject to regulation, without following the procedures specified in section 304(a)(5) of the Act. If the Secretary subsequently determines that regulation of fishing is necessary, then NOAA will follow the procedures specified in section 304(a)(5) of the Act.

§ 922.4 Boundaries.

The boundary for each of the thirteen National Marine Sanctuaries covered by this part is described in subparts F through R, respectively.

§ 922.5 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in Subparts F through R, subject to any emergency regulations promulgated pursuant to §§ 922.6, 922.112(d), 922.165, 922.186, or 922.196, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, tribal, or local authority of competent jurisdiction, including, but not limited to, Federal, Tribal, and State fishery management authorities, and subject to the provisions of section 312 of the NMSA. The Director may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

§ 922.6 Prohibited or otherwise regulated activities.

Subparts F through R set forth site-specific regulations applicable to the activities specified therein.

§ 922.7 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys, Hawaiian Islands Humpback Whale, and Thunder Bay National Marine Sanctuaries. See §§ 922.112(d), 922.165, 922.185, and 922.196, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.

§ 922.8 Penalties.

(a) Each violation of the NMSA or Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA), any regulation in this part or any permit issued pursuant thereto, is subject to a civil penalty. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

§ 922.9 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such

destruction, loss, or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable *in rem* to the United States for response costs and damages resulting from such destruction, loss, or injury.

§ 922.10 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

Leases, permits, licenses, or rights of subsistence use or access in existence on the date of designation of any National Marine Sanctuary may not be terminated by the Director. The Director may, however, regulate the exercise of such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

§ 922.11 Definitions.

The following definitions shall apply to this part, unless modified by the definitions for a specific subpart or regulation:

Abandoning means leaving without intent to remove any structure, material, or other matter on or in the seabed or submerged lands of a Sanctuary. For Thunder Bay National Marine Sanctuary and Underwater Preserve, abandoning means leaving without intent to remove any structure, material or other matter on the lake bottom associated with underwater cultural resources.

Act or NMSA means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.,* also known as the National Marine Sanctuaries Act.

Active Candidate means a site selected by the Secretary for further consideration for possible designation as a National Marine Sanctuary.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Management, National Oceanic and Atmospheric Administration (NOAA) or designee.

Attract or attracting means the conduct of any activity that lures or may lure any animal by using food, bait, chum, dyes, decoys (e.g., surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

Benthic community means the assemblage of organisms, substrate, and structural formations found at or near the sea/ocean/lake bottom that is periodically or permanently covered by water.

Clean means not containing detectable levels of harmful matter.

Commercial fishing means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals, including any attempt to engage in such activity.

Conventional hook and line gear means any fishing gear composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand, electrically, or hydraulically operated, regardless of whether mounted. This term does not include longlines.

Cruise ship means any vessel with 250 or more passenger berths for hire.

Cultural resources means any historical or cultural feature, including, but not limited to, archaeological sites, historic structures, shipwrecks, and artifacts.

Deserting means leaving a vessel aground, adrift, wrecked, junked, or in substantially dismantled condition without notification to the Director of the vessel going aground or becoming adrift, wrecked, junked, or substantially dismantled within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification, after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts, or when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Director means, except where otherwise specified, the Director of the Office of National Marine Sanctuaries or designee.

Effective date means the date of final regulations described and published in the **Federal Register**. For regulations governing the proposed designation of a new sanctuary or revising terms of designation, effective date means the 45th day of continuous session of Congress following submission of the sanctuary designation documents.

Exclusive economic zone means the zone established by Proclamation Numbered 5030, dated March 10, 1983, and as defined in the Magnuson-Stevens Act, as amended 16 U.S.C. 1801 *et seq.*

Federal project means any water resources development project conducted by the United States Army Corps of Engineers, or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds, as defined in the Magnuson-Stevens Act, as amended, 16 U.S.C. 1801 *et seq.*

Graywater means graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities. Such substances or combination of substances may include, but is not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include, but are not limited to, ''cultural resources,'' ''submerged cultural resources,'' and also include ''historical properties,'' as defined in the National Historic Preservation Act, as amended, 16 U.S.C. 470 *et seq.,* and its implementing regulations, as amended.

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Injure means to change adversely, either in the short or long term, a chemical, biological or physical attribute, or the viability, of a sanctuary resource or the impairment of a sanctuary resource service. This includes, but is not limited to, acts that cause the loss or destruction of a sanctuary resource.

Introduced species means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Lawful fishing means fishing authorized by a tribal, State or Federal entity with jurisdiction over the activity.

Lightering means at-sea transfer of a petroleum-based products, materials, or other matter from vessel to vessel.

Marine means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other matter of commercial value.

Motorized personal watercraft (MPWC) means (1) any vessel, propelled by machinery that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the motor of the vessel, in contrast to the conventional manner, where the operator stands or sits inside the vessel hull; (2) any vessel less than 20 feet in length overall as manufactured and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard's Maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183, except submarines; or (3) any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

National historic landmark means a district, site, building, structure or object designated as such by the Secretary of the Interior under the National Historic Landmarks Program (36 CFR part 65).

National Marine Sanctuary or Sanctuary means an area of the marine environment of special national significance designated as such by the National Oceanic and Atmospheric Administration (NOAA) pursuant to the Act or by Congress pursuant to legislation.

Oceangoing ship means any private, commercial, government, or military vessel of 300 gross registered tons or more, not including cruise ships.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, of any State or local unit of government, or of any foreign government.

Regional Fishery Management Council means any fishery council established under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Sanctuary quality means any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of a national marine sanctuary, including, but not limited to, water quality, sediment quality, and air quality.

Sanctuary resource means any living or non-living resource of a national marine sanctuary, or the parts or products thereof, that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the national marine sanctuary, including, but not limited to, waters of the sanctuary, the submerged lands of the sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, birds, sea turtles and other marine reptiles, marine mammals, and maritime heritage, cultural, archeological, and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource means an underwater cultural resource as defined at § 922.191.

Seagrass means any species of marine angiosperms (flowering plants) that inhabits a portion of the seabed in a national marine sanctuary. Those species include, but are not limited to: *Zostera asiatica, Zostera marina; Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens, H. engelmannii, H. johnsonii;* and *Ruppia maritima.*

Secretary means the Secretary of the United States Department of Commerce, or designee.

Shunt means to discharge expended drilling cuttings and fluids near the ocean seafloor.

Site Evaluation List (SEL) means a list of selected natural and historical resource sites selected by the Secretary as qualifying for further evaluation for possible designation as National Marine Sanctuaries.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

Stowed and not available for immediate use means fishing gear not readily accessible for immediate use, e.g., by being fishing gear securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

Subsistence use means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles; and for barter, if for food or non-edible items other than money, if the exchange is of a limited and non-commercial nature.

Take or taking means:

(1) Take or taking as that term is defined in section 3(19) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1532(19) (ESA), for any sanctuary resource listed as either endangered or threatened under the ESA;

(2) Take or taking as that term is defined in section 3(13) of the Marine Mammal Protection Act of 1972, as amended,16 U.S.C. 1362(13) (MMPA), for any sanctuary resource defined as a marine mammal by the (MMPA, 16 U.S.C. 1362(6));

(3) To conduct an activity prohibited by section 703 of the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703 (MBTA), for any sanctuary resource that is in some manner protected by the MBTA, as amended; or

(4) To harass, harm, disturb, pursue, hunt, shoot, wound, kill, trap, capture, injure, or collect, or attempt to harass, harm, disturb, pursue, hunt, shoot, wound, kill, trap, capture, injure, or collect any other sanctuary resources not subject to paragraphs (1), (2), or (3) of this definition. This includes, but is not limited to, collection of any dead or injured sanctuary resource, or any part thereof; or restraint or detainment of any sanctuary resource, no matter how temporarily; or to operate a vessel or aircraft or conduct any other act that results in the disturbance or molestation of any sanctuary resource.

Traditional fishing means those commercial, recreational, or subsistence fishing activities that were customarily conducted within the Sanctuary before its designation, as identified in the original final environmental impact statement and management plan for the Sanctuary.

Tropical fish means any fish of minimal sport and food value, usually brightly colored, often used in the aquarium trade, and that lives in a direct relationship with live bottom communities.

Vessel means a watercraft of any description capable of being used as a means of transportation in or on the waters of a Sanctuary. The term includes but is not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while maneuvering on the water, capable of being used as a means of transportation in or on the waters of the Sanctuary. For purposes of this part, the

terms ''vessel,'' ''watercraft,'' and ''boat'' have the same meaning.

Washington Coast treaty tribe means the Hoh, Makah, or Quilete Indian Tribes or the Quinault Indian Nation.

§ 922.12 Site Evaluation List (SEL)

(a) The Site Evaluation List (SEL) was established as a comprehensive list of marine sites with high natural resource values and with historical qualities of special national significance that are highly qualified for further evaluation for possible designation as National Marine Sanctuaries.

(b) The SEL is currently inactive. Criteria for inclusion of marine sites on a revised SEL will be issued, with public notice and opportunity to comment, when the Director determines that the SEL should be reactivated.

(c) Placement of a site on the SEL, or selection of a site as an active candidate for designation, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

■ 3. Remove and reserve part 922 subpart B:

Subpart B—[RESERVED]

■ 4. Remove and reserve part 922 subpart C.

Subpart C—[RESERVED]

■ 5. Revise part 922 Subpart D to read as follows:

Subpart D—National Marine Sanctuary Permitting

Sec.

922.30 National Marine Sanctuary general permits.
922.31 National Marine Sanctuary special use permits.
922.32 Application requirements and procedures.
922.33 Review procedures and evaluation.
922.34 Permit amendments, including renewals.
922.35 Special Use permit fees.
922.36 National Marine Sanctuary authorizations.
922.37 Appeals of permitting decisions.

Subpart D—National Marine Sanctuary Permitting

§ 922.30 National Marine Sanctuary general permits.

(a) Authority to issue general permits. The Director may allow a person to conduct an activity that would otherwise be prohibited by this part, through issuance of a general permit, provided the applicant complies with:

(1) The provisions of this subpart; and

(2) The permit procedures and criteria for all national marine sanctuaries in which the proposed activity is to take place in accordance with relevant site specific regulations appearing in subparts F through R.

(b) Sanctuary general permit categories. The Director may issue a sanctuary general permit under this subpart, subject to such terms and conditions as he or she deems appropriate, if the Director finds that the proposed activity falls within one of the following categories:

(1) Research—activities that constitute scientific research on or scientific monitoring of national marine sanctuary resources or qualities;

(2) Education—activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resources or qualities;

(3) Management—activities that assist in managing a national marine sanctuary;

(4) Jade removal—the removal of loose jade from the Jade Cove area within the Monterey Bay National Marine Sanctuary that cannot be collected under paragraphs (a)(1)(ii) and (iii) of 15 CFR § 922.132;

(5) Tribal self-determination—activities conducted by a Washington Coast treaty tribe and/or its designee as certified by the governing body of the tribe to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights, the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of tribal members;

(6) Maritime heritage—survey and inventory, research and recovery, or deaccession/transfer of Florida Keys National Marine Sanctuary maritime heritage resources performed in accordance with all requirements of the Programmatic Agreement for management of historical resources in the Florida Keys National Marine Sanctuary and section 922.166 of this part; and

(7) Further FKNMS purposes—activities that further the purposes of the Florida Keys National Marine Sanctuary, including those that facilitate multiple use of the sanctuary to the extent compatible with the primary objective of resource protection.

§ 922.31 National Marine Sanctuary special use permits.

(a) In general. A person may conduct any commercial or concession-type activity, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, manner, terms and conditions of, a special use permit issued under this section.

(b) Authority to issue. The Director, at his or her discretion, may issue a special use permit in accordance with this subpart and section 310 of the Act (16 U.S.C. 1441).

(c) Public notice. The Director will not issue a special use permit for any category of activity unless the Director has published a notice in the **Federal Register** that such category of activity is subject to the requirements of section 310 of the Act.

(d) Fees. The Director may assess and collect fees for the conduct of any activity authorized by a special use permit issued pursuant to this section. The fee will be assessed in accordance with section 922.35. No special use permit may be effective until all assessed fees are paid, unless otherwise provided by the Director by a fee schedule set forth as a permit condition.

§ 922.32 Application requirements and procedures.

(a) *Submitting applications.* Permit applications must be submitted by mail or electronic mail to the address listed in the subpart for the relevant national marine sanctuary. Applicants proposing to conduct an activity in more than one national marine sanctuary should send the application to each NOAA office for the relevant national marine sanctuaries in which the activity is proposed.

(b) *Application requirements.* All applications for a permit under this section must include the following information:

(1) A detailed description of the proposed activity including:

(i) A timetable for completion of the activity;

(ii) A detailed description of the proposed location for the activity; and

(iii) The equipment, personnel and methodology to be employed;

(2) The qualifications and experience of all personnel;

(3) The financial resources available to the applicant to conduct and complete the proposed activity and comply with any terms and conditions deemed necessary;

(4) A statement as to why it is necessary to conduct the activity within a national marine sanctuary;

(5) A description of the potential impacts of the activity, if any, on sanctuary resources and qualities;

(6) A description of the benefits the conduct of the activity would have for the national marine sanctuary or national marine sanctuary system;

(7) Copies of all other required licenses, permits, approvals, or other authorizations; and

(8) Such other information as the Director may request or is specified in the relevant subpart.

(c) *Additional information.* Upon receipt of an application, and as part of the evaluation of the permit application, the Director may:

(1) Request such additional information as he or she deems necessary to act on the application;

(2) Require a site visit; and

(3) Seek the views of any persons, within or outside the Federal government.

(d) *Time limit for submitting additional information.* Unless otherwise specified in writing by the Director, any information requested by the Director under paragraph (c) of this section must be received by the Director within 30 days of the postmark date of the request or, if email, the date of the email. Failure to provide such additional information may be deemed by the Director to constitute withdrawal of the permit application.

(e) *Incomplete applications.* The Director may consider an application incomplete, and therefore may refuse to further consider the application, if the applicant:

(1) Has failed to submit any of the information required under paragraph (b);

(2) Has failed to submit any of the information requested by the Director under paragraph (c) of this section;

(3) Has failed to pay any outstanding penalties that resulted from a violation of this part; or

(4) Has failed to fully comply with a permit issued pursuant to this subpart.

§ 922.33 Review procedures and evaluation.

(a) *Review criteria.* The Director shall not issue a permit under this subpart, unless he or she also finds that:

(1) The proposed activity will be conducted in a manner compatible with the primary objective of protection of national marine sanctuary resources and qualities, taking into account the following factors:

(i) The extent to which the conduct of the activity may diminish or enhance national marine sanctuary resources and qualities; and

(ii) Any indirect, secondary or cumulative effects of the activity.

(2) It is necessary to conduct the proposed activity within the national marine sanctuary to achieve its stated purpose;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's stated purpose and eliminate, minimize, or mitigate adverse effects on sanctuary resources and qualities as much as possible;

(4) The duration of the proposed activity and its effects are no longer than necessary to achieve the activity's stated purpose;

(5) The expected end value of the activity to the furtherance of national marine sanctuary goals and purposes outweighs any potential adverse impacts on sanctuary resources and qualities from the conduct of the activity;

(6) The applicant is professionally qualified to conduct and complete the proposed activity;

(7) The applicant has adequate financial resources available to conduct and complete the proposed activity and terms and conditions of the permit; and

(8) There are no other factors that would make the issuance of a permit for the activity inappropriate.

(9) For the Olympic Coast National Marine Sanctuary, the activity as proposed does not adversely affect any Washington Coast treaty tribe.

(b) *Permit terms and conditions.* The Director, at his or her discretion, may subject a permit issued under this subpart to such terms and conditions as he or she deems appropriate.

(c) *Permit actions.* The Director may amend, suspend, or revoke a permit issued pursuant to this part for good cause. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(d) *Application denials.* The Director may deny a permit application, in whole or in part, if it is determined that:

(1) The proposed activity does not meet the review criteria specified in this subpart;

(2) The permittee or applicant has acted in violation of the terms and conditions of a permit issued under this subpart or the relevant subpart for the national marine sanctuary;

(3) The permittee or applicant has acted in violation of the regulations set forth in this subpart; or

(4) For other good cause.

(e) *Communication of actions and denials.* Any action taken by the Director under paragraphs (c) and (d) of this section shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken.

§ 922.34 Permit amendments, including renewals.

(a) *Request for amendments.* Any person who has been issued a permit under this part (a permittee) may request to amend the permit at any time while that permit is valid. For purposes of this section, a permit time extension (renewal) is treated as a permit amendment. A request for permit amendment must be submitted to the same NOAA offices as the original permit and include sufficient information to describe the requested amendment and any additional supporting information.

(b) *Review of amendment requests.* After receiving the permittee's request for amendment, the Director will:

(1) Review all reports submitted by the permittee as required by the permit terms and conditions; and

(2) Request such additional information as may be necessary to evaluate the request.

(c) *Denial of amendment requests.* The Director may deny a permit amendment request upon finding:

(1) The amendment does not meet the review criteria under this subpart and the relevant subpart for all national marine sanctuaries in which the proposed activity is to take place;

(2) The permittee has been found to have violated the permit or these regulations;

(3) The activity has resulted in unforeseen adverse impacts to Sanctuary resources or qualities; or

(4) For other good cause.

§ 922.35 Special Use Permit fees.

(a) *Authority to assess fees.* The Director may assess a fee for the conduct of any activity authorized under a special use permit issued under § 922.31.

(b) *Components of permit fees.* A fee assessed under this section may include:

(1) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

(i) Number of personnel;

(ii) Personnel hours;

(iii) Equipment;

(iv) Environmental analyses or assessments;

(v) Copying; and

(vi) Overhead directly related to reviewing and processing the permit application;

(2) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the permit is being issued, including, but not limited to:

(i) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to sanctuary resources and qualities;

(ii) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(iii) Overhead costs directly related to the permitted activity; and

(3) An amount which represents the fair market value of the use of the sanctuary resource.

§ 922.36 National Marine Sanctuary authorizations.

(a) *Authority to issue authorizations.* The Director may authorize a person to conduct an activity otherwise prohibited by subparts L through P, or subpart R, if such activity is specifically allowed by any valid federal, state, or local lease, permit, license, approval, or other authorization (hereafter called ''agency approval''), provided the applicant complies with the provisions of this section. Such an authorization by ONMS is hereafter referred to as an ''ONMS authorization.''

(b) *Authorization notification to the Director*

(1) Notification requirement. An applicant must notify the Director in writing of the request for an ONMS authorization of an agency approval. The Director may treat an amendment, renewal, or extension of such an agency approval as constituting a new agency approval for purposes of this section.

(i) Notification must occur within fifteen days of the date of filing of the application for the agency approval.

(ii) Notification must be sent to the Director, Office of National Marine Sanctuaries, to the attention of the relevant Sanctuary Superintendent(s) at the address specified in subparts L through P, or subpart R, as appropriate.

(iii) A copy of the application for the agency approval must accompany the notification.

(2) *Director's response to notification.* The Director shall respond in writing to the applicant of his or her pending review of the request for an ONMS authorization.

c) *Authorization review procedures and evaluation.*

(1) *Additional information.* The Director may request additional information from the applicant as the Director deems reasonably necessary to determine whether to issue an ONMS authorization and what terms and conditions are reasonably necessary to protect sanctuary resources and qualities.

(i) The information requested must be received by the Director within 45 days of the postmark date of the request.

(ii) The Director may seek the views of any persons on the application.

(2) *Review criteria.* The Director shall consider the review criteria in § 922.33(a)(1)–(9) when deciding whether to issue an ONMS authorization.

(3) *Director's response.* The Director shall respond in writing to the applicant of his or her decision as to whether to authorize the agency approval.

(i) The Director may decline to issue an ONMS authorization and shall provide the reason(s) therefor. If the Director declines to issue an ONMS authorization, the activity remains prohibited in the sanctuary.

(ii) The Director may issue an ONMS authorization with no additional terms and conditions.

(iii) The Director may issue an ONMS authorization containing terms and conditions deemed reasonably necessary to protect sanctuary resources and qualities. The ONMS authorization terms and conditions are enforceable by NOAA. If the applicant does not comply with the ONMS authorization terms and conditions, the ONMS authorization is invalid, and the failure to comply constitutes a violation of the NMSA and these regulations, which may result in enforcement action and assessment of penalties.

(d) *Authorization actions.* The Director may amend, suspend, or revoke an ONMS authorization issued pursuant to this part for good cause. Procedures governing ONMS sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(e) *Communication of actions and denials.* Any action taken by the Director under paragraphs (c) and (d) of this section to deny, amend, suspend, or revoke an ONMS authorization shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken.

(f) *Time limits.* Any time limit prescribed in or established under this § 922.36 may be extended by the Director for good cause.

(g) *Authorization appeals.* In accordance with the provisions of § 922.37, the applicant may appeal to the Assistant Administrator:

(1) Any denial, amendment, suspension, or revocation by the Director of the issuance of an ONMS authorization; or

(2) Any term or condition imposed by the Director.

§ 922.37 Appeals of permitting decisions.

(a) *Potential appellants.* The following persons may appeal an action listed in paragraph (b) of this section (hereinafter referred to as ''appellant''):

(1) An applicant for, or a holder of, a National Marine Sanctuary permit issued pursuant to section 922.30;

(2) An applicant for, or a holder of, a special use permit issued pursuant to section 310 of the Act and section 922.31;

(3) An applicant for, or a holder of, an ONMS authorization of an agency approval issued by any Federal, State, or local authority of competent jurisdiction pursuant to section 922.36; and

(4) A person requesting certification of an existing lease, permit, license, or right of subsistence use or access under section 922.9.

(b) *Actions that may be appealed.* An appellant may appeal the following actions to the Assistant Administrator:

(1) The denial, conditioning, amendment, suspension, or revocation by the Director of a general permit pursuant to section 922.30, special use permit pursuant to section 310 of the Act and section 922.31, or an ONMS authorization issued pursuant to section 922.36; or

(2) The conditioning, amendment, suspension, or revocation of a certification under section 922.9.

(c) *Appeal requirements.* Appeals must be made in writing to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910 and must:

(1) State the action(s) by the Director being appealed;

(2) State the reason(s) for the appeal; and

(3) Be received within 30 days of the appellant's receipt of notice of the action by the Director.

(d) *Appeal procedures.*

(1) The Assistant Administrator may request the appellant submit such information as the Assistant Administrator deems necessary in order to render a decision on the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request.

(2) The Assistant Administrator may seek the views of any other persons when deciding an appeal.

(3) The Assistant Administrator may hold an informal hearing. If an informal hearing is held:

(i) The Assistant Administrator may designate an officer before whom the hearing shall be held;

(ii) The hearing officer shall give notice in the **Federal Register** of the time, place and subject matter of the hearing;

(iii) The appellant and Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer; and

(iv) The hearing officer shall recommend a decision in writing to the Assistant Administrator within 60 days after the record for the hearing closes.

(e) *Deciding an appeal.*

(1) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted at the Assistant Administrator's request

pursuant to paragraphs (d)(1) or (d)(2) of this section, regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision.

(2) The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefor in writing.

(3) The Assistant Administrator's decision shall constitute final agency action for purposes of the Administrative Procedure Act.

(f) *Authority to extend time limits.* Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal pursuant to subsection (c)(4) of this section may be extended by the Assistant Administrator for good cause.

■ 6. Remove and reserve part 922 Subpart E.

Subpart E— [RESERVED]

Subpart F—Monitor National Marine Sanctuary

■ 7. Revise § 922.60 to read as follows:

§ 922.60 Boundary.

The Monitor National Marine Sanctuary (Sanctuary) consists of a vertical water column in the Atlantic Ocean an estimated 0.593 square nautical miles (nmi²) extending from the surface to the seabed, the center of which is at N 35.00639 degrees W 75.40889 degrees.

* * * * *

■ 8. Revise § 922.62 to read as follows:

§ 922.62 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.61 if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, *Monitor* National Marine Sanctuary, c/o The Mariners' Museum, 100 Museum Drive, Newport News, VA 23606.

(c) In addition to the requirements of subpart D of this part, the Director may not issue a permit under this section unless the Director also finds that the extent to which the conduct of the proposed activity may diminish the value of the Monitor as a source of historic, cultural, aesthetic and/or maritime information is appropriate in relation to goals of the proposed activity.

(d) In considering any application submitted pursuant to this section, the Director shall seek and consider the views of the Advisory Council on Historic Preservation.

Subpart G—Channel Islands National Marine Sanctuary

■ 9. Revise § 922.70 to read as follows:

§ 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of approximately 1,128 square nautical miles (nmi²) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. The Sanctuary boundary begins at the Mean High Water Line of and extends seaward to a distance of approximately six nmi from the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (the Islands). The seaward boundary coordinates are listed in appendix A to this subpart.

■ 10. Remove and reserve § 922.71.

§ 922.71 [Reserved]

■ 11. Revise § 922.72(c) to read as follows:

§ 922.72 Prohibited or otherwise regulated activities—Sanctuary wide.

* * * * *

(c) The prohibitions in paragraphs (a)(3) through (a)(10), (a)(12), and (a)(13) of this section and in § 922.73 do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and 922.74.

* * * * *

■ 12. Revise § 922.74 to read as follows:

§ 922.74 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.72 or § 922.73 if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and subpart D of this part.

(b) Permit applications should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109.

Subpart H—Gulf of the Farallones National Marine Sanctuary

■ 13. Revise § 922.80 to read as follows:

§ 922.80 Boundary.

The Gulf of the Farallones National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 966 square nautical miles (nmi²) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands (and Noonday Rock) off the northern coast of California. The northernmost extent of the Sanctuary boundary is a geodetic line extending westward from Bodega Head approximately 6 nmi to the northern boundary of the Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then turns southward to a point approximately 6 nmi off Point Reyes, California, where it then turns westward again out towards the 1,000-fathom isobath. The Sanctuary boundary then extends in a southerly direction adjacent to the 1,000-fathom isobath until it intersects the northern extent of the Monterey Bay National Marine Sanctuary (MBNMS). The Sanctuary boundary then follows the MBNMS boundary eastward and northward until it intersects the Mean High Water Line at Rocky Point, California. The Sanctuary boundary then follows the MHWL north until it intersects the Point Reyes National Seashore (PRNS) boundary. The Sanctuary boundary then approximates the PRNS boundary, as established at the time of designation of the Sanctuary, to the intersection of the PRNS boundary and the MHWL in Tomales Bay. The Sanctuary boundary then follows the MHWL up Tomales Bay and Lagunitas Creek to the Route 1 Bridge where the Sanctuary boundary crosses the Lagunitas Creek and follows the MHWL until it intersects its northernmost extent near Bodega Head. The Sanctuary boundary includes Bolinas Lagoon, Estero de San Antonio (to the tide gate at Valley Ford Franklin School Road) and Estero Americano (to the bridge at Valley Ford Estero Road), as well as Bodega Bay, but not Bodega Harbor. Where the Sanctuary boundary crosses a waterway, the Sanctuary boundary excludes these waterways shoreward of the Sanctuary boundary line delineated by the coordinates provided. The precise seaward boundary coordinates are listed in appendix A to this subpart.

■ 14. Revise § 922.81 to read as follows:

§ 922.81 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Areas of Special Biological Significance (ASBS) are those areas designated by California's State Water Resources Control Board as requiring

protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are a subset of State Water Quality Protection Areas established pursuant to California Public Resources Code section 36700 *et seq.*

Routine maintenance means customary and standard procedures for maintaining docks or piers.

■ 15. Revise § 922.82 paragraph (c) to read as follows:

§ 922.82 Prohibited or otherwise regulated activities.

* * * * *

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with subpart D of this part and § 922.83.

* * * * *

■ 16. Revise § 922.83 to read as follows:

§ 922.83 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.82 if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gulf of the Farallones National Marine Sanctuary, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

Subpart I—Gray's Reef National Marine Sanctuary

■ 17. Revise § 922.90 to read as follows:

§ 922.90 Boundary.

The Gray's Reef National Marine Sanctuary (Sanctuary) consists of approximately 16.68 square nautical miles (nmi^2) of ocean waters and the submerged lands thereunder, off the coast of Georgia. The Sanctuary boundary includes all waters and submerged lands within the geodetic lines connecting the following coordinates:

Datum: NAD83

Geographic Coordinate System

(1) N 31.362732 degrees W 80.921200 degrees
(2) N 31.421064 degrees W 80.921201 degrees
(3) N 31.421064 degrees W 80.828145 degrees
(4) N 31.362732 degrees W 80.828145 degrees
(5) N 31.362732 degrees W 80.921200 degrees

■ 18. Revise § 922.91 to read as follows:

§ 922.91 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Handline means fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.

Rod and reel means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually or electrically.

■ 19. Amend § 922.92 by revising paragraph (a) as follows:

§ 922.92 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with subpart D of this part and § 922.93, the following activities are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

* * * * *

■ 20. Revise § 922.93 to read as follows:

§ 922.93 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.92(a)(1) through (11) if the activity is specifically authorized by and conducted in accordance within the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

Subpart J—National Marine Sanctuary of American Samoa

■ 21. Revise § 922.101 to read as follows:

§ 922.101 Boundary.

The Sanctuary is comprised of six distinct units, forming a network of marine protected areas around the islands of the Territory of American Samoa. Tables containing the exact coordinates of each point described below can be found in Appendix to Subpart J—National Marine Sanctuary of American Samoa Boundary Coordinates.

(a) Fagatele Bay Unit. The Fagatele Bay unit is approximately a 0.189 square nautical miles (nmi^2) coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, Territory of American Samoa and includes Fagatele Bay in its entirety. The landward boundary is defined by the mean high high water (MHHW) line of Fagatele Bay until the point at which it intersects the seaward boundary of the Sanctuary as defined by a straight line between Fagatele Point (S 14.36527 degrees, W 170.76932 degrees) and Steps Point (S 14.37291 degrees, W 170.76056 degrees) from the point at which it intersects the mean high high water line seaward.

* * * * *

■ 22. Revise § 922.102 to read as follows:

§ 922.102 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Live rock means any Coral, basalt rock, or other natural structure with any living organisms growing in or on the Coral, basalt rock, or structure.

■ 23. Revise § 922.103 paragraph (e) to read as follows:

§ 922.103 Prohibited or otherwise regulated activities—Sanctuary-wide.

* * * * *

(e) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.107.

■ 24. Revise § 922.107 to read as follows:

(a) Any person in possession of a valid permit issued by the Director, in consultation with the ASDOC, in accordance with this section and subpart D of the part may conduct an activity otherwise prohibited by § 922.103, § 922.104, and § 922.105 in the Sanctuary.

(b) Permit applications shall be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, American Samoa National Marine Sanctuary, P.O. Box 4318, Pago Pago, AS 96799.

Subpart K—Cordell Bank National Marine Sanctuary

■ 25. Revise § 922.110 to read as follows:

§ 922.110 Boundary.

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 399 square nautical miles (nmi^2) of ocean waters, and submerged lands thereunder, off the northern coast of California approximately 50 miles west-northwest of San Francisco, California. The Sanctuary boundary extends westward (approximately 250 degrees) from the northwestern most point of the Gulf of the Farallones National Marine Sanctuary (GFNMS) to the 1,000 fathom isobath northwest of Cordell Bank. The Sanctuary boundary then generally follows this isobath in a southerly direction to the western-most point of the GFNMS boundary. The Sanctuary boundary then follows the GFNMS boundary again to the northwestern corner of the GFNMS. The exact boundary coordinates are listed in appendix A to this subpart.

■ 26. Remove and reserve § 922.111.

§ 922.111 [Reserved]

■ 27. Amend § 922.112 by revising paragraph (b) as follows:

§ 922.112 Prohibited or otherwise regulated activities.

* * * * *

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with subpart D of this part and § 922.113.

* * * * *

■ 28. Revise § 922.113 to read as follows:

§ 922.113 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.112 if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.

Subpart L—Flower Garden Banks National Marine Sanctuary

■ 29. Revise § 922.120 to read as follows:

§ 922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (the Sanctuary) consists of three separate areas of ocean waters over and surrounding the East and West Flower Garden Banks and Stetson Bank, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (nmi) south-southwest of Cameron, Louisiana, and encompasses 19.20 square nautical miles (nmi^2). The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.61 nmi^2. The area designated at Stetson Bank is located approximately 70 nmi southeast of Galveston, Texas, and encompasses 0.64 nmi^2. The three areas encompass a total of 42.45 nmi^2. The boundary coordinates for each area are listed in appendix A to this subpart.

■ 30. Revise § 922.121 to read as follows:

§ 922.121 Definitions.

In addition to those definitions found at § 922.11, the following definition applies to this subpart:

No-activity zone means the geographic areas delineated by the Department of the Interior in stipulations described in Notice to Lessees No. 2009–G39, ''Biologically-Sensitive Underwater Features and Areas'' for topographic features of the Central and Western Gulf of Mexico. The precise description of these areas around the East and West Flower Garden Banks are provided in appendix B of this subpart; the no-activity zone around Stetson Bank is defined as the 52 meter isobath. These particular aliquot part descriptions for the East and West Flower Garden Banks, and the 52 meter isobath around Stetson Bank, define the geographic scope of the ''no-activity zones'' for purposes of the regulations in this subpart.

■ 31. Amend § 922.122 by revising paragraphs (a)(4), (a)(7), (f) and (h) to read as follows:

§ 922.122 Prohibited or otherwise regulated activities.

(a) * * *

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged lands of the Sanctuary.

* * * * *

(7) Injuring, catching, harvesting, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the Sanctuary by use of longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear.

* * * * *

(f) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit or ONMS authorization issued pursuant to subpart D of this part and § 922.123 or a Special Use permit issued pursuant to section 310 of the Act.

* * * * *

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under subpart D of this part and § 922.123 or a Special Use permit under section 10 of the Act authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone. Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone and issued after the January 18, 1994 shall be invalid.

■ 32. Revise § 922.123 to read as follows:

§ 922.123 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.122(a)(2) through (10) if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551.

Subpart M—Monterey Bay National Marine Sanctuary

■ 33. Revise § 922.130 to read as follows:

§ 922.130 Boundary.

The Monterey Bay National Marine Sanctuary (Sanctuary) consists of two separate areas. (a) The first area consists of an area of approximately 4016 square nautical miles (nmi^2) of coastal and ocean waters, and submerged lands thereunder, in and surrounding Monterey Bay off the central coast of California. The northern terminus of the Sanctuary boundary is located along the southern boundary of the Gulf of the

Farallones National Marine Sanctuary (GFNMS) beginning at Rocky Point just south of Stinson Beach in Marin County. The Sanctuary boundary follows the GFNMS boundary westward to a point approximately 29 nmi offshore from Moss Beach in San Mateo County. The Sanctuary boundary then extends southward in a series of arcs, which generally follow the 500 fathom isobath, to a point approximately 27 nmi offshore of Cambria, in San Luis Obispo County. The Sanctuary boundary then extends eastward towards shore until it intersects the Mean High Water Line (MHWL) along the coast near Cambria. The Sanctuary boundary then follows the MHWL northward to the northern terminus at Rocky Point. The shoreward Sanctuary boundary excludes a small area between Point Bonita and Point San Pedro. Pillar Point Harbor, Santa Cruz Harbor, Monterey Harbor, and Moss Landing Harbor are all excluded from the Sanctuary shoreward from the points listed in appendix A except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge, and west of the tide gate at Elkhorn Road and toward the center channel from the MHWL is included within the Sanctuary, excluding areas within the Elkhorn Slough National Estuarine Research Reserve. Exact coordinates for the seaward boundary and harbor exclusions are provided in appendix A to this subpart.

(b) The Davidson Seamount Management Zone is also part of the Sanctuary. This area, bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 square nmi (nmi^2) of ocean waters and the submerged lands thereunder. The shoreward boundary of this portion of the Sanctuary is located approximately 65 nmi off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the Davidson Seamount Management Zone boundary are provided in appendix F to this subpart.

■ 34. Revise § 922.131 to read as follows:

§ 922.131 Definitions.

In addition to those definitions found at 15 CFR 922.11, the following definitions apply to this subpart:

Davidson Seamount Management Zone means the area bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, and consists of approximately 585 square nautical miles (nmi^2) of ocean waters and the submerged lands thereunder. The shoreward boundary of this portion of the Sanctuary is located approximately 65 nautical miles (nmi) off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the Davidson Seamount Management Zone boundary are provided in appendix F to this subpart.

Hand tool means a hand-held implement, utilized for the collection of jade pursuant to 15 CFR 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar, or abalone iron). Pneumatic, mechanical, electrical, hydraulic, or explosive tools are, therefore, examples of what does not meet this definition.

■ 35. Amend § 922.132 by revising paragraphs (d) and (f) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

* * * * *

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, and paragraphs (a)(2) through (11) and (a)(13) of this section, do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit or ONMS authorization issued pursuant to subpart D of this part and 922.133 or a Special Use permit issued pursuant to section 310 of the Act.

* * * * *

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part and 922.133 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: the exploration for, development, or production of oil, gas, or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to 15 CFR 922.47, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) before January 1, 1993. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

* * * * *

■ 36. Revise § 922.133 to read as follows:

§ 922.133 Permit procedures.

Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, CA 93940.

Subpart N—Stellwagen Bank National Marine Sanctuary

■ 37. Revise § 922.140 to read as follows:

§ 922.140 Boundary.

(a) The Stellwagen Bank National Marine Sanctuary (Sanctuary) consists of an area of approximately 639 square nautical miles (nmi^2) of Federal marine waters and the submerged lands thereunder, over and around Stellwagen Bank and other submerged features off the coast of Massachusetts. The boundary encompasses the entirety of Stellwagen Bank; Tillies Bank, to the northeast of Stellwagen Bank; and portions of Jeffreys Ledge, to the north of Stellwagen Bank.

(b) The Sanctuary boundary is identified by the following coordinates, indicating the most northeast, southeast, southwest, west-northwest, and north-northwest points: N 42.76662 degrees W 70.21716 degrees (NE) ; N 42.09320 degrees W 70.03559 degrees (SE); N 42.12914 degrees W 70.47096 degrees (SW); N 42.5482 degrees W 70.59788 degrees (WNW); and N 42.65113 degrees W 70.50314 degrees (NNW). The western border is formed by a straight line connecting the most southwest and the west-northwest points of the Sanctuary. At the most west-northwest point, the Sanctuary border follows a line contiguous with the three-mile jurisdictional boundary of Massachusetts to the most north-northwest point. From this point, the northern border is formed by a straight line connecting the most north-northwest point and the most northeast point. The eastern border is formed by a straight line connecting the most northeast and the most southeast points of the Sanctuary. The southern border follows a straight line between the most southwest point and a point located at N 42.11516 degrees W–70.27853 degrees. From that point, the southern border then continues in a west-to-east direction along a line contiguous with the three-mile jurisdictional boundary of Massachusetts until reaching the most southeast point of the Sanctuary. The boundary coordinates are listed in appendix A to this subpart.

■ 38. Revise § 922.141 to read as follows:

§ 922.141 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Industrial material means mineral, as defined in § 922.10.

■ 39. Amend § 922.142 by revising paragraphs (a)(3), (d) and (f) to read as follows:

§ 922.142 Prohibited or otherwise regulated activities:

(a) * * *

(3) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged lands of the Sanctuary, except as an incidental result of:

* * * * *

(d) The prohibitions in paragraphs (a)(1) and (3) through (7) of this section do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.143 or a Special Use permit issued pursuant to section 310 of the Act.

* * * * *

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a permit under subpart D of this part and § 922.143, or under section 310 of the act, authorizing, or otherwise approving, the exploration for, development or production of industrial materials within the Sanctuary, or the disposal of dredged materials within the Sanctuary (except by a certification, pursuant to § 922.47, of valid authorizations in existence on November 4, 1992) and any leases, licenses, permits, approvals or other authorizations authorizing the exploration for, development or production of industrial materials in the Sanctuary issued by other authorities after November 4, 1992, shall be invalid.

■ 40. Revise § 922.143 to read as follows:

§ 922.143 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.142 (a) (1) and (3) through (7) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066.

Subpart O—Olympic Coast National Marine Sanctuary

■ 41. Revise § 922.150(a) to read as follows:

§ 922.150 Boundary.

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2408 square nautical miles (nmi^2) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

* * * * *

■ 42. Revise § 922.151 to read as follows:

§ 922.151 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Indian reservation means a tract of land set aside by the Federal Government for use by a Federally recognized American Indian tribe and includes, but is not limited to, the Makah, Quileute, Hoh and Quinault Reservations.

Treaty means a formal agreement between the United States Government and an Indian tribe.

■ 43. Amend § 922.152 by revising paragraphs (a)(4), (e) and (h) to read as follows:

§ 922.152 Prohibited or otherwise regulated activities:

(a) * * *

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged lands of the Sanctuary, except as an incidental result of:

* * * * *

(e) The prohibitions in paragraphs (a)(2) through (7) of this section do not apply to any activity specifically authorized by and conducted under and in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit or an ONMS authorization issued pursuant to subpart D of this part and § 922.153 or a Special Use permit issued pursuant to section 310 of the Act.

* * * * *

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part and § 922.153 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.47, of valid authorizations in existence on July 22, 1994 and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to the Quillayute River Navigation Project; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

■ 44. Revise § 922.153 to read as follows:

§ 922.153 Permit procedures.

(a) A person may conduct an activity prohibited by § 922.152 (a) (2) through (7) if conducted in accordance with the scope, purpose, terms and conditions of a permit or ONMS authorization issued under this section and subpart D of this part.

(b) Applications for such permits or ONMS authorizations should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Olympic Coast National Marine Sanctuary, 115 E. Railroad Ave., Suite 301, Port Angeles, WA 98362.

(c) The Director shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe.

(d) Removal or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry onto a significant cultural site designated by a tribal governing body, the Director shall require the express written consent of the governing body of the tribe or tribes to which such cultural site pertains.

(e) Where the issuance or denial of a permit is requested by the governing body of a Washington Coast treaty tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the tribe.

Subpart P—Florida Keys National Marine Sanctuary

■ 45. Revise § 922.161 to read as follows:

§ 922.161 Boundary.

The Sanctuary consists of an area of approximately 2872 square nautical miles (nmi^2) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. Appendix I to this subpart sets forth the precise Sanctuary boundary.

■ 46. Revise § 922.162 to read as follows:

§ 922.162 Definitions.

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a definition appears in § 922.11 and this section, the definition in this section governs.

Acts means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101–605), and the National Marine Sanctuaries Act, as amended (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16 U.S.C. 1431 *et seq.*).

Adverse effect means any factor, force, or action that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms any Sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this section, or any of the qualities, values, or purposes for which the Sanctuary is designated.

Airboat means a vessel operated by means of a motor driven propeller that pushes air for momentum.

Areas To Be Avoided means the areas in which vessel operations are prohibited pursuant to section 6(a)(1) of the FKNMSPA (see § 922.164(a)). Appendix VII to this subpart sets forth the geographic coordinates of these areas, including any modifications thereto made in accordance with section 6(a)(3) of the FKNMSPA.

Closed means all entry or use is prohibited.

Coral means but is not limited to the corals of the Class Hydrozoa (stinging and hydrocorals); Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals); Class Anthozoa, Subclass Ceriantipatharia, Order Antipatharia (black corals); and Class Anthozoa, Subclass Ocotocorallia, Order Gorgonacea, species Gorgonia ventalina and Gorgonia flabellum (sea fans).

Coral area means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deepwater banks, and hardbottoms.

Coral reefs means the hard bottoms, deep-water banks, patch reefs, and outer bank reefs.

Ecological Reserve means an area of the Sanctuary consisting of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary. Appendix IV to this subpart sets forth the geographic coordinates of these areas.

Existing Management Area means an area of the Sanctuary that is within or is a resource management area established by NOAA or by another Federal authority of competent jurisdiction as of the effective date of these regulations where protections above and beyond those provided by Sanctuary-wide prohibitions and restrictions are needed to adequately protect resources. Appendix II to this subpart sets forth the geographic coordinates of these areas.

Exotic species means a species of plant, invertebrate, fish, amphibian, reptile or mammal whose natural zoogeographic range would not have included the waters of the Atlantic Ocean, Caribbean, or Gulf of Mexico without passive or active introduction to such area through anthropogenic means.

Fishing means:

(1) The catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or any operation at sea in support of, or in preparation for, any activity described in this subparagraph (1).

(2) Such term does not include any scientific research activity which is conducted by a scientific research vessel.

Hardbottom means a submerged marine community comprised of organisms attached to exposed solid rock substrate. Hardbottom is the substrate to which corals may attach but does not include the corals themselves.

Idle speed only/no-wake means a speed at which a boat is operated that is no greater than 4 knots or does not produce a wake.

Idle speed only/no-wake zone means a portion of the Sanctuary where the speed at which a boat is operated may be no greater than 4 knots or may not produce a wake.

Length overall (LOA) or length means, as used in § 922.167 with respect to a vessel, the horizontal distance, rounded to the nearest foot (with 0.5 feet and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

Live rock means any living marine organism or an assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells (e.g., scallops, clams, oysters). Living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to: sea anemones (Phylum Cnidaria: Class Anthozoa: Order Actinaria); sponges (Phylum Porifera); tube worms (Phylum Annelida), including fan worms, feather duster worms, and Christmas tree worms; bryozoans (Phylum Bryzoa); sea squirts (Phylum Chordata); and marine algae, including Mermaid's fan and cups (Udotea spp.), corraline algae, green feather, green grape algae (Caulerpa spp.) and watercress (Halimeda spp.).

Marine life species means any species of fish, invertebrate, or plant included insubsection (2), (3) or (4) of Rule 68B–42.001, Florida Administrative Code, or any part thereof.

Military activity means an activity conducted by the Department of Defense with or without participation by foreign forces, other than civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers.

No-access buffer zone means a portion of the Sanctuary where vessels are prohibited from entering regardless of the method of propulsion.

No motor zone means an area of the Sanctuary where the use of internal combustion motors is prohibited. A vessel with an internal combustion motor may access a no motor zone only through the use of a push pole, paddle, sail, electric motor or similar means of operation but is prohibited from using its internal combustion motor.

Officially marked channel means a channel marked by Federal, State of Florida, or Monroe County officials of competent jurisdiction with navigational aids except for channels marked idle speed only/no wake.

Prop dredging means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed of the Sanctuary. Prop dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the

seabed of the Sanctuary. Prop dredging does not include the disturbance to bottom sediments resulting from normal vessel propulsion.

Prop scarring means the injury to seagrasses or other immobile organisms attached to the seabed of the Sanctuary caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury (e.g., cutting seagrass rhizomes). Prop scarring does not include minor disturbances to bottom sediments or seagrass blades resulting from normal vessel propulsion.

Residential shoreline means any man-made or natural:

(1) Shoreline,

(2) Canal mouth,

(3) Basin, or

(4) Cove adjacent to any residential land use district, including improved subdivision, suburban residential or suburban residential limited, sparsely settled, urban residential, and urban residential mobile home under the Monroe County land development regulations.

Sanctuary means the Florida Keys National Marine Sanctuary.

Sanctuary Preservation Area means an area of the Sanctuary that encompasses a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Appendix V to this subpart sets forth the geographic coordinates of these areas.

Sanctuary wildlife means any species of fauna, including avifauna, that occupy or utilize the submerged resources of the Sanctuary as nursery areas, feeding grounds, nesting sites, shelter, or other habitat during any portion of their life cycles.

Special-use Area means an area of the Sanctuary set aside for scientific research and educational purposes, recovery or restoration of Sanctuary resources, monitoring, to prevent use or user conflicts, to facilitate access and use, or to promote public use and understanding of Sanctuary resources. Appendix VI to this subpart sets forth the geographic coordinates of these areas.

Stem means the foremost part of a vessel, consisting of a section of timber or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end.

Stern means the aftermost part of the vessel.

Tank vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a United States flag vessel;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States [46 U.S.C. 2101].

Tropical fish means any species included in 68B–42 of the Florida Administrative Code, or any part thereof.

Wildlife Management Area means an area of the Sanctuary established for the management, protection, and preservation of Sanctuary wildlife resources, including such an area established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted to minimize disturbances to Sanctuary wildlife; to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. Appendix III to this subpart lists these areas and their access restrictions.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

■ 47. Amend § 922.163 by revising paragraphs (a)(3), (b), (c) and (f) to read as follows:

§ 922.163 Prohibited activities—Sanctuary-wide.

(a) * * *

(3) *Alteration of, or construction on, the seabed.* Drilling into, dredging, or otherwise altering the seabed of the Sanctuary, or engaging in prop-dredging; or constructing, placing or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary, except as an incidental result of:

* * * * *

(b) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to § 922.166 and this subpart D of this part.

(c) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of these regulations, provided that the applicant complies with § 922.36, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

* * * * *

(f) Notwithstanding paragraph (b) of this section and paragraph (a) of § 922.168, in no event may the Director issue a permit under § 922.166 and subpart D of this part, authorizing, or otherwise approving, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary other than in connection with beach renourishment or Sanctuary restoration projects, or the discharge of untreated or primary treated sewage, and any purported authorizations issued by other authorities after the effective date of these regulations for any of these activities within the Sanctuary shall be invalid.

* * * * *

■ 48. Amend § 922.164 by revising paragraph (e)(1)(iii) to read as follows:

§ 922.164 Additional activity regulations by Sanctuary area.

* * * * *

(e) * * *

(1) * * *

(iii) ''Research-only area'' to provide for scientific research or education relating to protection and management, through the issuance of a Sanctuary General permit for research pursuant to § 922.166 of these regulations and subpart D of this part; and

* * * * *

■ 49. Revise § 922.166 to read as follows:

§ 922.166 Permits other than for access to the Tortugas Ecological Reserve—application procedures.

(a) A person may conduct an activity otherwise prohibited by §§ 922.163 or 922.164, other than an activity involving the survey/inventory, research/recovery, or deaccession/transfer of Sanctuary maritime heritage resources, if the activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33037.

(c) For activities proposed to be conducted within any of the areas described in § 922.164 (b)–(e), the Director shall not issue a permit unless he or she further finds that such activities will further and are consistent with the purposes for which such area was established, as described in §§ 922.162 and 922.164 and in the management plan for the Sanctuary.

(d) *National Marine Sanctuary Survey/Inventory of Maritime Heritage Resources Permit.*

(1) A person may conduct an activity otherwise prohibited by §§ 922.163 or 922.164 involving the survey/inventory of Sanctuary maritime heritage resources if the activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a Survey/Inventory of Historical Resources permit issued under this paragraph (c). If a survey/inventory activity will involve test excavations or removal of artifacts or materials for evaluative purposes, a Survey/Inventory of Maritime Heritage Resources permit is required. Persons who have demonstrated their professional abilities under a Survey/Inventory permit will be given preference over other persons in consideration of the issuance of a Research/Recovery permit. While a Survey/Inventory permit does not grant any rights with regards to areas subject to pre-existing rights of access which are still valid, once a permit is issued for an area, other survey/inventory permits will not be issued for the same area during the period for which the permit is valid.

(2) The Director, at his or her discretion, may issue a Survey/Inventory permit under this paragraph (b), subject to such terms and conditions as he or she deems appropriate, if the Director finds that such activity:

(i) Satisfies the requirements for a permit issued under subpart D;

(ii) Either will be non-intrusive, not include any excavation, removal, or recovery of historical resources, and not result in destruction of, loss of, or injury to Sanctuary resources or qualities, or if intrusive, will involve no more than the minimum manual alteration of the seabed and/or the removal of artifacts or other material necessary for evaluative purposes and will cause no significant adverse impacts on Sanctuary resources or qualities; and

(iii) That such activity will be conducted in accordance with all requirements of the Programmatic Agreement for the Management of Maritime Heritage Resources in the Florida Keys National Marine Sanctuary among NOAA, the Advisory Council on Historic Preservation, and the State of Florida (hereinafter Programmatic Agreement (PA), and that such permit issuance is in accordance with such PA. Copies of the PA may also be examined at, and obtained from, *http://floridakeys.noaa.gov* or from the Florida Keys National Marine Sanctuary Office, P.O. Box 1083, Key Largo, FL 33037.

(e) *National Marine Sanctuary Research/Recovery of Sanctuary Maritime Heritage Resources Permit.*

(1) A person may conduct any activity prohibited by §§ 922.163 or 922.164 involving the research/recovery of Sanctuary historical resources if such activity is specifically authorized by and is conducted in accordance with the scope, purpose, terms and conditions of a Research/Recovery of Maritime Heritage Resources permit issued under this paragraph (c).

(2) The Director, at his or her discretion, may issue a Research/Recovery of Historical Resources permit, under this paragraph (c), and subject to such terms and conditions as he or she deems appropriate, if the Director finds that:

(i) Such activity satisfies the requirements for a permit issued under section 922.33;

(ii) The recovery of the resource is in the public interest as described in the PA;

(iii) Recovery of the resource is part of research to preserve historic information for public use; and

(iv) Recovery of the resource is necessary or appropriate to protect the resource, preserve historical information, and/or further the policies and purposes of the NMSA and the FKNMSPA, and that such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the PA.

(3) Any permit authorizing the research/recovery of Maritime Heritage resources shall be subject to the following terms and conditions:

(i) A professional archaeologist shall be in charge of planning, field recovery operations, and research analysis.

(ii) An agreement with a conservation laboratory shall be in place before field recovery operations are begun, and an approved nautical conservator shall be in charge of planning, conducting, and supervising the conservation of any artifacts and other materials recovered.

(iii) A curation agreement with a museum or facility for curation, public access and periodic public display, and maintenance of the recovered historical resources shall be in place before commencing field operations (such agreement for the curation and display of recovered maritime heritage resources may provide for the release of public artifacts for deaccession/transfer if such deaccession/transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary. Deaccession/transfer of maritime heritage resources requires a Special-use permit issued pursuant to paragraph (d) and such deaccession/transfer shall be executed in accordance with the requirements of the PA).

(iv) The site's archaeological information is fully documented, including measured drawings, site maps drawn to professional standards, and photographic records.

■ 50. Amend § 922.167 by revising paragraph (b)(1) to read as follows:

§ 922.167 Permits for access to the Tortugas Ecological Reserve.

* * * * *

(b)(1) Access permits must be requested at least 72 hours but no longer than one month before the date the permit is desired to be effective. Access permits do not require written applications or the payment of any fee. Permits may be requested via telephone or radio by contacting FKNMS at the following number:

Key West office: telephone: (305) 292–0311

* * * * *

Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary

■ 51. Revise § 922.181(a) to read as follows:

§ 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine

Sanctuary encompasses approximately 1,032 square nautical miles (nmi²), and consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams:

* * * * *

■ 52. Amend § 922.182 by revising the definition for ''Alteration of the seabed'' to read as follows:

§ 922.182 Definitions.

* * * * *

Alteration of the seabed means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary.

* * * * *

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.,* and 16 U.S.C. 1431 *et seq.*

Subpart R—Thunder Bay Bank National Marine Sanctuary and Underwater Preserve

■ 53. Revise § 922.190 to read as follows:

§ 922.190 Boundary.

The Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 338 square nautical miles (nmi²) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The boundary forms an approximately rectangular area by extending along the ordinary high water mark between the northern and southern boundaries of Alpena County, cutting across the mouths of rivers and streams, and lakeward from those points along latitude lines to longitude 83 degrees west. The coordinates of the boundary are set forth in appendix A to this Subpart.

■ 54. Amend § 922.191 by removing the definition for ''traditional fishing.''

■ 55. Remove and reserve § 922.194.

§ 922.194 [Reserved].

■ 56. Revise § 922.195 to read as follows: *§ 922.195 Permit procedures.*

(a) A person may conduct an activity otherwise prohibited by § 922.193 (a)(1) through (3), if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a State Permit *provided that:*

(1) The State Archaeologist certifies to NOAA that the activity authorized under the State Permit will be conducted consistent with the Programmatic Agreement, in which case such State Permit shall be deemed to have met the requirements of subpart D of this part; or

(2) In the case where the State Archaeologist does not certify that the activity to be authorized under a State Permit will be conducted consistent with the Programmatic Agreement, the person complies with the requirements of subpart D of this part.

(b) In instances where the conduct of an activity is prohibited by § 922.193 (a)(1) through (3) of this subpart is not addressed under a State or other Federal lease, license, permit or other authorization, a person may conduct such activity if it is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued pursuant to subpart D of this part and the Programmatic Agreement.

(c) A permit for recovery of an underwater cultural resource may be issued if:

(1) The proposed activity satisfies the requirements for permits described under paragraphs (a) through (b) of this section and section 922.33;

(2) The recovery of the underwater cultural resource is in the public interest;

(3) Recovery of the underwater cultural resource is part of research to preserve historic information for public use; and

(4) Recovery of the underwater cultural resource is necessary or appropriate to protect the resource, preserve historical information, or further the policies of the Sanctuary.

(d) A person shall file an application for a permit with the Michigan Department of Environmental Quality, Land and Water Management Division, P.O. Box 30458, Lansing, MI 48909–7958. The application shall contain all of the following information:

(1) The name and address of the applicant;

(2) Research plan that describes in detail the specific research objectives and previous work done at the site. An archaeological survey must be conducted on a site before an archaeological permit allowing excavation can be issued;

(3) Description of significant previous work in the area of interest, how the proposed effort would enhance or contribute to improving the state of knowledge, why the proposed effort should be performed in the Sanctuary, and its potential benefits to the Sanctuary;

(4) An operational plan that describes the tasks required to accomplish the project's objectives and the professional qualifications of those conducting and supervising those tasks (see § 922.195(e)(9) of this section). The plan must provide adequate description of methods to be used for excavation, recovery and the storage of artifacts and related materials on site, and describe the rationale for selecting the proposed methods over any alternative methods;

(5) Archaeological recording, including site maps, feature maps, scaled photographs, and field notes;

(6) An excavation plan describing the excavation, recovery and handling of artifacts;

(7)(i) A conservation plan documenting:

(A) The conservation facility's equipment;

(B) Ventilation temperature and humidity control; and

(C) Storage space.

(ii) Documentation of intended conservation methods and processes must also be included;

(8) A curation and display plan for the curation of the conserved artifacts to ensure the maintenance and safety of the artifacts in keeping with the Sanctuary's federal stewardship responsibilities under the Federal Archaeology Program (36 CFR part 79, Curation of Federally-Owned and Administered Archaeological Collections); and

(9) Documentation of the professional standards of an archaeologist supervising the archaeological recovery of historical artifacts. The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or closely related field plus:

(i) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(ii) At least four months of supervised field and analytic experience in general North American archaeology;

(iii) Demonstrated ability to carry research to completion; and

(iv) At least one year of full-time professional experience at a supervisory level in the study of archeological resources in the underwater environment.

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