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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[FAA–2013–0545; Directorate Identifier 2013–NM–048–AD; Amendment 39–17787; AD 2014–05–14]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 727 airplanes. This AD was prompted by certain mandated programs intended to support the airplane reaching its limit of validity of the engineering data that support the established structural maintenance program. This AD requires an inspection for cracks in the main wheel well pressure floor and a preventive modification or permanent repair, as applicable. We are issuing this AD to prevent cracking in the main wheel well pressure floor, which could result in reduced structural integrity of the airplane, and decompression of the cabin.

DATES: This AD is effective May 1, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 14, 1992 (57 FR 53247, November 9, 1992).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0545; 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 address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Chandraduth Ramdoss, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office (ACO), FAA, 3960 Paramount Boulevard, Suite 100, Lakewood, CA 90712–4137; phone: 562–627–5329; fax: 562–627–5210; email: *chandraduth.ramdoss@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 727 airplanes. The NPRM published in the **Federal Register** on July 18, 2013 (78 FR 42900). The NPRM was prompted by certain mandated programs intended to support the airplane reaching its limit of validity of the engineering data that support the established structural maintenance program. The NPRM proposed to require an inspection for cracks in the main wheel well pressure floor and a preventive modification or permanent repair, as applicable. We are issuing this AD to prevent cracking in the main wheel well pressure floor, which could result in reduced structural integrity of the airplane, and decompression of the cabin.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 42900, July 18, 2013) and the FAA's response to each comment.

Request To Clarify the Reason for Issuing the NPRM (78 FR 42900, July 18, 2013)

Boeing requested that we clarify a statement in the ''Discussion'' section of the preamble of the NPRM (78 FR 42900, July 18, 2013). Boeing stated that the ''Discussion'' section in the preamble of the NPRM did not explain that the reason for proposing the NPRM was to complete one of the recommendations contained in Boeing's 727 Service Action Requirement Program. Boeing noted that in the NPRM's ''Discussion'' section references were made to ''certain programs'' and ''previously established program,'' but should have specifically referred to the Boeing 727 Service Action Requirement Program. Boeing also noted that the service information referenced in the NPRM is related to the Boeing 727 Service Action Requirement Program.

We agree that the references to ''certain programs'' and ''previously established program'' were both referring to the Boeing 727 Service Action Requirement Program, and that the service information referenced in the NPRM (78 FR 42900, July 18, 2013) is related to that program. However, the portion of the NPRM's ''Discussion'' section that Boeing referred to is not carried over into this final rule; therefore, no change to this final rule is necessary in this regard.

Request To Correct Statements Regarding Other Relevant Rulemaking

Boeing requested that we correct the statements regarding the AD requirements of the other relevant rulemaking mentioned in the preamble of the NPRM (78 FR 42900, July 18, 2013). Boeing stated that the discussion regarding AD 92–19–11, Amendment 39–8369 (57 FR 53247, November 9, 1992), incorrectly stated that AD 92–19–11 required the preventative modification or permanent repair for airplanes having line numbers 001 through 1432. Boeing noted that AD 92–19–11 did not require the preventative modification, but provided the option to

terminate the repetitive inspections if the preventative modification or permanent repair was installed on airplanes with line numbers 001 through 1432. Boeing also stated that, in a different rulemaking action, the ''Other Relevant Rulemaking'' section provided a clearer description of the actions required by AD 90–06–09, Amendment 39–6488 (55 FR 8370, March 7, 1990), and AD 92–19–11, and requested that the NPRM be revised to include the language from the other rulemaking action.

We agree that the NPRM (78 FR 42900, July 18, 2013) incorrectly stated that AD 92–19–11, Amendment 39–8369 (57 FR 53247, November 9, 1992), requires the preventive modification or permanent repair. However, in its comment, Boeing stated that the option to terminate the repetitive inspections provided in AD 92–19–11 was for airplanes having line numbers 001 through 1432, which is not correct. AD 92–19–11 provides the option to terminate the repetitive inspection requirements for all Model 727 airplanes once the permanent repair or preventive modification is installed.

We are issuing this final rule to require the permanent repair or modification for Model 727 airplanes with line positions 1433 through 1832 inclusive. AD 90–06–09, Amendment 39–6488 (55 FR 8370, March 7, 1990), only requires the permanent repair or terminating modification, in accordance with Boeing Service Bulletin 727–53–0149, Revision 2, dated March 20, 1981, which only applies to airplanes having line numbers 001 through 1432 inclusive. AD 92–19–11, Amendment 39–8369 (57 FR 53247, November 9, 1992), does not require the permanent repair or terminating modification, but provides it as an option.

The ''Other Relevant Rulemaking'' section of the NPRM (78 FR 42900, July 18, 2013) is not carried over into this final rule; therefore, no change to this final rule is necessary in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 42900, July 18, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 42900, July 18, 2013).

Costs of Compliance

We estimate that this AD affects 106 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170	$0	$170	$18,020.
Modification/repair	Up to 272 work-hours × $85 per hour = $23,120	5,565	Up to $28,685	Up to $3,040,610.

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, 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):

2014–05–14 The Boeing Company: Amendment 39–17787; Docket No. FAA–2013–0545; Directorate Identifier 2013–NM–048–AD.

(a) Effective Date

This AD is effective May 1, 2014.

(b) Affected ADs

This AD affects AD 92–19–11, Amendment 39–8369 (57 FR 53247, November 9, 1992).

(c) Applicability

This AD applies to The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category, having line position 1433 through 1832 inclusive, identified as Group 2 airplanes in Boeing Service Bulletin 727–53–0149, Revision 4, dated June 27, 1991.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by certain mandated programs intended to support the airplane reaching its limit of validity of the engineering data that support the established structural maintenance program. We are issuing this AD to prevent cracking in the

main wheel well pressure floor, which could result in reduced structural integrity of the airplane, and decompression of the cabin.

(f) Compliance

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

(g) Definition of Detailed Inspection

For the purposes of this AD, a detailed inspection is an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

(h) Inspection and Repair/Modification

At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD: Do a one-time detailed, high frequency eddy current (HFEC), or dye penetrant inspection for cracks in the main wheel well pressure floor at body stations 930, 940, and 950, between left and right buttock line 50 and the side of the airplane body, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–53–0149, Revision 4, dated June 27, 1991.

(1) Prior to the accumulation of 60,000 total flight cycles; or

(2) Within 2,500 flight cycles or 2 years after the effective date of this AD, whichever occurs first.

Note 1 to paragraph (h) of this AD: If a detailed inspection is performed, stripping the paint will help ensure accurate inspection results.

(i) Preventive Modification

If no cracks are found during the inspection required by paragraph (h) of this AD: Before further flight, do the preventive modification, in accordance with Part IV of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0149, Revision 4, dated June 27, 1991. Doing the preventive modification terminates the repetitive inspections required by paragraph (d) of AD 92–19–11, Amendment 39–8369 (57 FR 53247, November 9, 1992).

(j) Permanent Repair

If any crack is found during the inspection required by paragraph (h) of this AD: Before further flight, do the permanent repair, in accordance with Part III of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0149, Revision 4, dated June 27, 1991. Doing the permanent repair terminates the repetitive inspections required by paragraph (d) of AD 92–19–11, Amendment 39–8369 (57 FR 53247, November 9, 1992).

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 727–53–0149, Revision 3, dated November 2, 1989, which was incorporated by reference in AD 92–19–11, Amendment 39–8369 (57 FR 53247, November 9, 1992).

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Chandraduth Ramdoss, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office (ACO), FAA, 3960 Paramount Boulevard, Suite 100, Lakewood, CA 90712–4137; phone: 562–627–5329; fax: 562–627–5210; email: *chandraduth.ramdoss@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference in this AD may be obtained at the addresses specified in paragraphs (n)(4) and (n)(5) of this AD.

(n) 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.

(3) The following service information was approved for IBR on December 14, 1992 (57 FR 53247, November 9, 1992).

(i) Boeing Service Bulletin 727–53–0149, Revision 4, dated June 27, 1991.

(ii) Reserved.

(4) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(5) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on February 18, 2014.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–06775 Filed 3–26–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM13–16–000; Order No. 796]

Generator Verification Reliability Standards

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) approves the following Reliability Standards that were submitted to the Commission for approval by the North American Electric Reliability Corporation, the Commission-certified Electric Reliability Organization: MOD–025–2 (Verification and Data Reporting of Generator Real and Reactive Power Capability and Synchronous Condenser Reactive Power Capability), MOD–026–1 (Verification of Models and Data for Generator Excitation Control System or Plant Volt/Var Control Functions), MOD–027–1(Verification of Models and Data for Turbine/Governor and Load Control or Active Power/Frequency Control Functions), PRC–019–1 (Coordination of Generating Unit or Plant Capabilities, Voltage Regulating Controls, and Protection), and PRC–024–1 (Generator Frequency and Voltage Protective Relay Settings). The generator verification Reliability Standards help ensure that verified data is available for power system planning and operational studies by requiring the verification of generator equipment and capability needed to support Bulk-Power System reliability and promoting the coordination of important protection system settings.

DATES: *Effective Date:* This rule will become effective May 27, 2014.

FOR FURTHER INFORMATION CONTACT:

Syed Ahmad (Technical Information), Office of Electric Reliability, Federal

Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8718, *syed.ahmad@ferc.gov*.

Mark Bennett (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8524, *mark.bennett@ferc.gov*.

SUPPLEMENTARY INFORMATION:

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

(Issued March 20, 2014)

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission approves five Reliability Standards that were submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO): MOD–025–2 (Verification and Data Reporting of Generator Real and Reactive Power Capability and Synchronous Condenser Reactive Power Capability), MOD–026–1 (Verification of Models and Data for Generator Excitation Control System or Plant Volt/Var Control Functions), MOD–027–1 (Verification of Models and Data for Turbine/Governor and Load Control or Active Power/Frequency Control Functions), PRC–019–1 (Coordination of Generating Unit or Plant Capabilities, Voltage Regulating Controls, and Protection), and PRC–024–1 (Generator Frequency and Voltage Protective Relay Settings).

2. The Commission approves the associated implementation plan, violation risk factors and, with one modification, the violation severity levels. The Commission also approves the retirement of Reliability Standards MOD–024–1 and MOD–025–1 immediately prior to the effective date of MOD–025–2.

3. The generator verification Reliability Standards will help ensure that generators remain in operation during specified voltage and frequency excursions; properly coordinate protective relays and generator voltage regulator controls; and enhance the ability of generator models to accurately reflect the generator's capabilities and equipment performance. Reliability Standards MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1 are new, whereas Reliability Standard MOD–025–2 consolidates two existing Reliability Standards, MOD–024–1 (Verification of Generator Gross and Net Real Power Capability) and MOD–025–1 (Verification of Generator Gross and Net Reactive Power Capability), into one new Reliability Standard. Portions of Reliability Standards MOD–025–2 and PRC–024–1 respond to directives contained in Order No. 693.[2]

4. The generator verification Reliability Standards improve the accuracy of model verifications needed to support reliability and enhance the coordination of generator protection systems and voltage regulating system controls. Such improvements should help reduce the risk of generator trips and provide more accurate models for transmission planners and planning coordinators to develop system models and simulations. We also determine that the generator verification Reliability Standards adequately address the Commission's directives regarding Reliability Standard MOD–025–2 and PRC–024–1. Therefore, pursuant to section 215(d) of the FPA, we approve Reliability Standards MOD–025–2, MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1.

I. Background

5. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[3] Once approved, Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4]

6. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[5] and subsequently certified NERC.[6] On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC. Because MOD–024–1 and MOD–025–1, which NERC had included in its filing, involved regional procedures that had not been submitted, the Commission postponed either approving or remanding these standards until NERC submitted additional information. However, the Commission issued three directives in Order No. 693 with respect to MOD–024–1 and MOD–025–1.

7. Reliability Standards MOD–024–1 and MOD–025–1 are ''fill-in-the-blank'' Reliability Standards that would require regional reliability organizations to develop procedures to verify generator real and reactive power capability, respectively. Regarding MOD–024–1, the Commission directed NERC to clearly define the test conditions and methodologies contained in the Reliability Standard, and also to clarify the time period within which regional reliability organizations must provide generator real power capability verification.[7] For MOD–025–1, the Commission directed NERC to clarify that MVAR capability verifications should be made at multiple points over a generator unit's operating range and also directed NERC to clarify the time period within which reactive power capability verifications are to be provided.[8] These directives are addressed in Reliability Standard MOD–025–2.

8. Order No. 693 contained two directives pertaining to Reliability Standard PRC–024–1. First, the Commission stated that NERC should use the Nuclear Regulatory Commission's (NRC) voltage ride through requirements when implementing Reliability Standards to ''assure that there is consistency between the Reliability Standards and the NRC requirement that the system is accurately modeled.'' [9] Second, the Commission directed NERC to explicitly require generators to be ''capable of riding through the same set of Category B and C contingencies, as required by wind generators in Order No. 661, or that those generators that cannot ride through be simulated as tripping.'' [10] These directives are addressed in Reliability Standard PRC–024–1.

II. NERC Petition and Proposed Reliability Standards

A. NERC Petition

9. On May 30, 2013, NERC filed its petition seeking approval of Reliability Standards MOD–025–2, MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1. NERC states that four of the five

[1] 16 U.S.C. 824o.

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

[3] 16 U.S.C. 824o(d)(2).

[4] *Id.* 824o(e)(3).

[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[6] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc. v. FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[7] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 1310–1311.

[8] *Id.* PP 1321–1323.

[9] *Id.* P 1787.

[10] *Id.*

Reliability Standards are new, while existing Reliability Standards MOD–024–1 and MOD–025–1 were merged into proposed Reliability Standard MOD–025–2. NERC also seeks approval of the associated implementation plans, violation risk factors and violation severity levels, and retirement of current Reliability Standards MOD–024–1 and MOD–025–1 at midnight of the day immediately prior to the effective date of MOD–025–2. NERC proposes to phase in effective dates in stages over periods ranging from five years (for MOD–025–2, PRC–019–1 and PRC–024–1) to ten years (for MOD–026–1 and MOD–027–1).[11] NERC states that ''these five proposed Reliability Standards address generator verifications needed to support Bulk-Power System reliability and will ensure that accurate data is verified and made available for planning simulations.'' [12]

10. NERC explains that Bulk-Power System reliability benefits from ''good quality simulation models of power system equipment'' and that ''model validation ensures the proper performance of the control systems and validates the computer models used for stability analysis.'' [13] NERC further states that the proposed Reliability Standards will enhance reliability because the tests performed to obtain model data may reveal latent defects that could cause ''inappropriate unit response during system disturbances.'' [14] NERC also states that simulating the response of synchronous machines and related control systems in sufficient detail is essential for effective power system planning and operational studies.[15] For accurate simulations reflecting actual equipment performance covering a range of disturbances, NERC states that models must not only contain adequate information, they must also correspond to actual field values.[16] Finally, NERC asserts that Reliability Standards MOD–025–2 and PRC–024–1 address the directives in Order No. 693 mentioned above.

B. Reliability Standards and NERC Explanation of Provisions

1. Reliability Standard MOD–025–2

11. Reliability Standard MOD–025–2 merges two existing Reliability Standards, MOD–024–1 and MOD–25–1, and has the stated purpose of ensuring the accuracy of generator information related to gross and net real and reactive power capability and synchronous condenser reactive power capability that is available for planning models and bulk electric system reliability assessments.[17] The Reliability Standard applies to generator owners and transmission owners that own synchronous condensers and has three requirements and two Attachments. Attachment 1, incorporated into Requirements R1.1, R2.1 and R3.1, specifies the periodicity for performing real and reactive power capability verification and the verification specifications for applicable facilities. Attachment 2, which generator owners and transmission owners will use to report to their transmission planners the information described in Attachment 1, is incorporated into Requirements R1.2, R2.2 and R3.2.

12. NERC states that Reliability Standard MOD–025–2 addresses the directives in Order No. 693. Specifically, NERC states: (1) Requirement R1, Part 1.2 specifies that a generator owner must submit Attachment 2 or another form containing the same information to its transmission planner within 90 calendar days of either the date the data are recorded for a staged test or the date the data are selected for verification using historical operational data; (2) Requirement R1, Part 1.1 requires a generator owner to verify the real power capability of its generating units as set forth in Attachment 1, including the consideration of ambient conditions during the verification period; and (3) Attachment 1, Sections 2.1 through 2.4, requires reactive power capability verification at multiple points across a unit's operating range.[18]

2. Reliability Standard MOD–026–1

13. Reliability Standard MOD–026–1, applicable to generator owners and transmission planners, is a new Reliability Standard and has six requirements and an Attachment describing the periodicity for excitation control system or plant volt/var function model verification. NERC explains that the purpose of MOD–026–1 is to ensure that detailed modeling of generator excitation systems, essential for valid simulations in power system stability studies, will be conducted and that those models accurately represent generator excitation control system or plant volt/var control function behavior for bulk electric system reliability assessments.[19] Requirement R1 requires transmission planners to provide generator owners with specified information within 90 days of a written request, including instructions on how to obtain models, block diagrams and/or data sheets and model data for any of the generator owner's existing applicable unit specific excitation control system or plant volt/var control function contained in the transmission planner's dynamic database from the current (in-use) models. NERC explains that Requirement R1 ensures that the transmission planner provides necessary information to the generator owners so that they can provide a useable model in an acceptable format. This procedure further supports generator owner compliance with Requirement R2 by providing relevant information to transmission planners.[20]

14. Requirement R2 requires each generator owner to provide its transmission planner with a verified generator excitation control system or plant volt/var control function model that includes the data and documentation specified in Requirement R2, Part 2.1. The periodicity for this requirement is set forth in Attachment 1. The purpose of Requirement R2 is to verify that the generator excitation control system or plant volt/var control function model and the model parameters used in dynamic simulations performed by the transmission planner accurately represent the generator excitation control system or plant volt/var control function behavior when assessing bulk electric system reliability.[21] Requirement R3 requires generator owners to provide written responses to transmission planner requests within 90 days regarding unusable models, technical concerns and transmission planner determinations that simulated excitation control system or plant volt/var control function model responses do not match a recorded response to a transmission system event. NERC explains that Requirement R3 of Reliability Standard MOD–026–1 ''provides response requirements for a Generator Owner when it receives certain requests from the Transmission Planner. This communication ensures that Generator Owners have an obligation to respond in a timely fashion when there are demonstrated problems with a model that was provided by the Generator Owner in accordance with

[11] NERC Petition, Exhibit B (Implementation Plan for Reliability Standards Submitted for Approval).

[12] NERC Petition at 2.

[13] *Id.*

[14] *Id.* 2–3.

[15] *Id.* 3.

[16] *Id.*

[17] Reliability Standard MOD–025–2, Section A.3 (Purpose).

[18] NERC Petition at 10–12.

[19] *Id.* 14–16.

[20] *Id.* 15.

[21] *Id.* 16.

Requirement R2.'' [22] Under Requirement R4, generator owners are required to determine whether changes to applicable units affect models provided pursuant to Requirement R2 and, when consistent with this determination, to provide the transmission planner with revised model data or plans to perform model verification.

15. Requirement R5 requires a generator owner to respond within 90 days to a ''technically justified unit request'' from its transmission planner to perform a model review of a unit or plant, including details for model verification or corrected model data. A footnote to Requirement R5 states that ''Technical justification is achieved by the Transmission Planner demonstrating that the simulated unit or plant response does not match the measured unit or plant response.'' Also, Applicability section 4.2.4 in MOD–026–1 states that facilities to which the standard applies include ''For all Interconnections: A technically justified unit that meets NERC registry criteria but is not otherwise included in the above Applicability sections 4.2.1, 4.2.2, or 4.2.3 and is requested by the Transmission Planner.''

16. NERC explains that Requirement R5 allows transmission planners to request that generator owners who otherwise are not covered by the Applicability section (i.e., whose MVA ratings are lower than the applicability thresholds specified in Section 4 of Reliability Standard MOD–026–1 but meet or exceed the Registry Criteria) provide model verifications or correct model data.[23] Requirement R6 requires transmission planners to provide written responses to generator owners within 90 days of receiving a verified excitation control system or plant volt/var control function model information whether the model is usable or not in accordance with Requirement R2. If it determines the model to be unusable, the transmission planner must explain the technical basis for that decision.

3. Reliability Standard MOD–027–1

17. Reliability Standard MOD–027–1 is a new Reliability Standard and contains five requirements and an Attachment (Turbine/Governor and Load Control or Active Power Frequency Control Model Periodicity). Its purpose is to verify that the turbine/governor and load control or active power/frequency control model and the model parameters, used in dynamic simulations that assess bulk electric system reliability, accurately represent generator unit real power response to system frequency variations.[24] Requirement R1 requires transmission planners to provide generator owners with guidance that will enable generator owners to provide the information required in Requirements R2 and R4 within 90 days of a written request. Requirement R2 requires generator owners to provide transmission planners with a verified turbine/governor and load control or active power/frequency control model for each applicable unit, including documentation and data in accordance with the periodicity specified in MOD–027–1, Attachment 1. Attachment 1 also contains a table listing verification conditions and related actions required of generator owners.[25]

18. Requirement R3 establishes communication requirements to ensure that generator owners respond to transmission planner determinations that a generator owner's model is not ''usable,'' or where there is a difference between the model and three or more actual transmission system events.[26] Requirement R3 requires generator owners to provide a written response within 90 days.[27] Requirement R4 requires generator owners to provide transmission planners with updates when changes occur to the turbine/governor and load control or active power/frequency control system that alter equipment response characteristics.[28] Requirement R5 requires transmission planners to inform generator owners within 90 days of receiving model information (in accordance with Requirement R2) whether the model is usable or not. If a model is unusable, the transmission planner shall provide the generator owner with an explanation of the technical basis for that decision. Also, Requirement R3 requires generator owners to provide a written response to this explanation within 90 days.

4. Reliability Standard PRC–019–1

19. Reliability Standard PRC–019–1 is a new Reliability Standard and contains two requirements intended to ensure that both generator owners and transmission owners verify coordination of generating unit facility or synchronous condenser voltage regulating controls, limit functions, equipment capabilities and protection system settings.[29] Requirement R1 requires generator owners and transmission owners to coordinate the voltage regulating system controls with the equipment capabilities and settings of the applicable protection system devices and functions.[30] Requirement R2 requires generator owners and transmission owners to perform the coordination described in Requirement R1 to address equipment or setting changes.[31] The coordination required in Reliability Standard PRC–019–1 must be performed at least every five years.

5. Reliability Standard PRC–024–1

20. Reliability Standard PRC–024–1 is a new Reliability Standard and consists of four requirements and two Attachments. The stated purpose of PRC–024–1 is to ensure that generator owners set their generator protective relays such that generating units remain connected during defined frequency and voltage excursions.[32] Requirement R1 requires generator owners having generator frequency protective relaying activated to trip their generating units to set their protective relaying to prevent their generating units from tripping within the ''no trip zone'' of PRC–024–1 Attachment 1 (unless one of three specified exceptions applies). NERC explains that Attachment 1 contains tables with curve data points for each Interconnection indicating the amount of time a generator needs to remain connected at specific defined frequency excursions.[33] Requirement R2 addresses voltage excursions and requires, subject to four exceptions, generator owners to ensure that their voltage protective relaying settings prevent their generating units from tripping within the ''no trip zone'' described in PRC–024–1, Attachment 2.

21. NERC states that the standard drafting team believes the voltage profile contained in Attachment 2 includes excursions that would be expected under Category B and C contingencies.[34] Therefore, NERC asserts that by ensuring that generator units remain connected to the grid during voltage excursions, Requirement R2 and Attachment 2 satisfy the directive in Order No. 693 to ''explicitly

[22] *Id.* 17.

[23] *Id.* 18.

[24] Reliability Standard MOD–027–1, Section A.3 (Purpose).

[25] NERC Petition at 20.

[26] *Id.* 21.

[27] *Id.*

[28] *Id.* 22.

[29] Reliability Standard PRC–019–1, Section A.3 (Purpose).

[30] NERC Petition at 23.

[31] *Id.* 24.

[32] Reliability Standard PRC–024–1, Section A.3 (Purpose).

[33] NERC Petition at 25.

[34] *See* Reliability Standard TPL–002–0b, System Performance Following Loss of a Single Bulk Electric System Element (Category B) and Reliability Standard TPL–003–0b, System Performance Following Loss of Two or More Bulk Electric System Elements (Category C).

require either that all generators are capable of riding through the same set of Category B and C contingencies, as required by wind generators in Order No. 661, or that those generators that cannot ride through be simulated as tripping.'' [35]

22. Requirement R3 of Reliability Standard PRC–024–1 requires generator owners to document regulatory or equipment limitations that would prevent them from satisfying the relay setting criteria in Requirements R1 and R2. Generator owners must inform their planning coordinator and transmission planner of any such limitation within 30 calendar days after identifying it. NERC explains that the standard drafting team believes that ''regulatory limitations'' include NRC requirements and, therefore, Requirement R3 satisfies the Commission's guidance that ''NRC requirements should be used when implementing the Reliability Standards.'' [36]

23. Requirement R4 requires generator owners to provide their planning coordinator or transmission planner with generator protection trip settings associated with Requirements R1 and R2 within 60 days of either a written request or a change to previously requested trip settings.[37]

III. Notice of Proposed Rulemaking

24. On September 19, 2013, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve Reliability Standards MOD–025–2, MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1.[38] The Commission also proposed to approve the associated implementation plans, violation risk factors and violation severity levels, with one modification, and the retirement of existing Reliability Standards MOD–024–1 and MOD–025–1 prior to the effective date of MOD–025–2.

25. While the Commission proposed to approve all five generator verification Reliability Standards, the Commission raised issues regarding certain provisions of Reliability Standards MOD–026–1 and MOD–027–1. In the NOPR, the Commission sought comments on the following issues: (1) Whether the higher applicability thresholds for MOD–026–1 and MOD–027–1 could limit their effectiveness, especially in areas with a high concentration of generators falling below the thresholds, or impede transmission planners' ability to address reliability risk; and (2) whether the provision in Reliability Standard MOD–026–1 allowing transmission planners to compel a generator owner below the applicability threshold with a ''technically justified'' unit to comply with the Reliability Standard's requirements is ''sufficiently clear and workable.'' The Commission also sought comment on whether this provision should be included in Reliability Standard MOD–027–1.

26. In response to the NOPR, the Commission received comments from: NERC, Idaho Power Company (Idaho Power), Electricity Consumers Resource Council (ELCON), ISO New England (ISO–NE), Arizona Public Service Company (APS), International Transmission Company (ITC), Edison Electric Institute (EEI), and G&T Cooperatives.[39]

IV. Discussion

27. Pursuant to section 215(d) of the FPA, the Commission approves Reliability Standards MOD–025–2, MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission determines that these Reliability Standards will help ensure that verified data is available for power system planning and operational studies by requiring the verification of generator equipment needed to support Bulk-Power System reliability and enhancing the coordination of important protection system settings. Also, Reliability Standards MOD–025–2 and PRC–024–1 satisfy relevant outstanding directives set forth in Order No. 693.[40] Further, we approve the retirement of Reliability Standards MOD–024–1 and MOD–025–1 prior to the effective date of MOD–025–2. We also approve the associated implementation plan and, with one exception, the proposed violation risk factors and violations severity levels.

28. We discuss below the following issues: (A) The Megavolt Amperes (MVA) applicability thresholds for Reliability Standards MOD–026–1 and MOD–027–1; (B) the process for determining when it is ''technically justified'' for a transmission planner to require a generator owner to provide model reviews under MOD–026–1; (C) why the ''technically justified'' provision is not also included in MOD–027–1; (D) whether MOD–025–2 should include more flexibility to verify unit reactive power capability; and (E) assignment of violation severity levels.

A. Higher MVA Applicability Threshold in MOD–026–1 and MOD–027–1 NERC Petition

29. The applicability thresholds in Reliability Standards MOD–026–1 and MOD–027–1 are higher than for Reliability Standards MOD–025–2, PRC–019–1 and PRC–024–1, and could exclude approximately 20 percent of bulk electric system installed MVA from compliance.[41] In contrast to the greater than 20 MVA applicability thresholds set forth in the other three Reliability Standards in NERC's petition,[42] MOD–026–1 and MOD–027–1 would exclude units rated below 100 MVA (Eastern and Quebec Interconnections), 75 MVA (Western Interconnection) and 50 MVA (ERCOT Interconnection).[43]

30. During the standard development process, several industry stakeholders commented that the standard drafting team should ensure that the applicability thresholds of MOD–026–1 and MOD–027–1 be aligned with the other three proposed Reliability Standards. In response, the standard drafting team stated that ''verification of excitation system is expensive both from a monetary and human resource viewpoint. Therefore, the [standard drafting team] believes that these applicability thresholds will result in substantial accuracy improvements to the excitation models and associated Reliability Standards, while not unduly mandating costly and time-consuming verification efforts.'' [44]

NOPR

31. In the NOPR, the Commission sought comment on whether the higher applicability thresholds of MOD–026–1

[35] *Id.* 29 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1787).

[36] *Id.* 27–28 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1787).

[37] *Id.* 31.

[38] *Generator Verification Reliability Standards,* Notice of Proposed Rulemaking, 78 FR 58,492 (September 24, 2013), 144 FERC ¶ 61,205 (2013) (NOPR).

[39] G&T Cooperatives consists of Associated Electric Cooperative, Inc., Basin Electric Power Cooperative, and Tri-State Generation and Transmission Association, Inc.

[40] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1787.

[41] *See* NERC Petition, Exhibit E (Summary of the Reliability Standard Development Proceeding and Complete Record of Development of Proposed Reliability Standard) section entitled ''Consideration of Comments on Draft Standard'' at 91 (indicating that the threshold in the proposed standard would limit applicability of the standard to 80 percent of installed MVA on an Interconnection basis).

[42] Reliability Standard MOD–025–2, Section 4.2 (Facilities); Reliability Standard PRC–019–1, Section 4.2 (Facilities); and Reliability Standard PRC–024–1, Section 4 (Applicability).

[43] Reliability Standard MOD–026–1, Section 4.2 (Facilities); Reliability Standard MOD–027–1, Section 4.2 (Facilities).

[44] NERC Petition, Exhibit E (Summary of the Reliability Standard Development Proceeding and Complete Record of Development of Proposed Reliability Standard) section entitled ''Consideration of Comments on Draft Standard'' at 91.

and MOD–027–1, especially in areas with a high concentration of generators falling below the thresholds, would: (a) limit the effectiveness of proposed Reliability Standards MOD–026–1 and MOD–027–1; or (b) adversely impact transmission planners' ability to reduce risk to Bulk-Power System reliability.[45]

Comments

32. NERC maintains that the standard drafting team determined that the applicability thresholds for Reliability Standards MOD–026–1 and MOD–027–1 are appropriate. NERC states that the standard drafting team determined, based on its expertise, that there is little, if any, reliability benefit to requiring every generator to comply with MOD–026–1 and MOD–027–1. NERC explains that ''the standard drafting team believes that these applicability thresholds will result in substantial accuracy improvements to the excitation models and associated reliability-based limits determined by dynamic simulations, while balancing concerns regarding the resources it [sic] requires to implement verification efforts.'' [46] NERC notes that the resources required to implement verification efforts can be extensive: ''many entities will require the use of consultants to perform the needed tests and model validations due to the expertise required. For example, it was observed in the SERC field trial that using consultants for MOD–026–1 cost roughly $20,000 to $30,000 for one unit.'' [47] NERC further states that Section 4.2.4 of MOD–026–1, allowing transmission planners to request information from all generators when ''technically justified,'' confirms that the higher applicability threshold ''will not limit the effectiveness of'' Reliability Standards MOD–026–1 and MOD–027–1.[48]

33. ELCON, EEI, and APS state that excluding approximately 20 percent of MVA from the applicability of MOD–026–1 and MOD–027–1 will not limit the effectiveness of these Reliability Standards. ELCON states that the higher thresholds would not undermine the effectiveness of MOD–026–1 and MOD–027–1 or hamper ''transmission planners' ability to reduce risk to the Bulk-Power System.'' [49] EEI states that it ''does not view the higher thresholds utilized in the two proposed standards as inappropriate nor do we believe it will diminish reliability or adversely impact transmission planners' ability to reduce risk to the [Bulk- Power System].'' [50] Rather, EEI asserts that the thresholds ''would be expected to enhance reliability by focusing the limited expertise available for model verification at the units which make the most impact to the dynamic performance of the power system.'' [51] APS supports the higher thresholds for Reliability Standards MOD–026–1 and MOD–027–1 because there is limited benefit to reliability to require every generator, regardless of size, to comply, and ''the owners of the smaller units are still expected to provide correct estimated model data for use in simulation.'' [52] APS asserts that the cost of performing the required model verification for a generation unit is significant and does not vary considerably based on the size of the unit. ''Currently, there are a limited number of individuals with the expertise necessary to perform this model verification, and the costs to hire an expert range between $10,000 and $20,000 for each generator unit tested.'' [53]

34. Idaho Power and ISO–NE state that excluding approximately 20 percent of MVA from the applicability of MOD–026–1 and MOD–027–1 would limit the effectiveness of the Reliability Standards. Idaho Power maintains that many registered generator owners will not be required to comply with the data verification standards, which will ultimately reduce the overall effectiveness of Reliability Standards MOD–026–1 and MOD–027–1.[54] Idaho Power bases its comments largely upon its experience with the WECC Modeling and Validation Workgroup (WECC Workgroup), which concluded that the higher thresholds would undermine modeling and simulation accuracy for the WECC region because ''[e]xcluding approximately 20 percent of generators based upon different thresholds can lead to very different interpretations of system reliability.'' [55] Idaho Power notes that the current WECC policy requiring validation at an aggregate unit threshold of 20 MVA has ''greatly improved the accuracy of system models for dynamic simulation [and] a safer and more reliable operation of the WECC Interconnection.'' [56] Further, Idaho Power states that generation resources subject to Reliability Standards MOD–026–1 and MOD–027–1 are not spread evenly throughout the interconnection-wide model of the Western Interconnection, which will result in some areas being represented with a lower percentage of validated generation models.[57] Idaho Power asserts that the higher thresholds limit the overall effectiveness of the Reliability Standards and believes the Commission should adopt a 10 MVA single unit and 20 MVA aggregate thresholds for the Western Interconnection.[58]

35. ISO–NE states that ''[t]he 100 MVA threshold is too high [and] would limit the effectiveness of these standards and would adversely impact ISO–NE's ability to reduce risk to Bulk Power System reliability by excluding too many generating units in New England.'' [59] ISO–NE believes the use of the 20 MVA threshold is supported by NERC's registration requirements and the Commission's determination that ''generating units with a capacity as low as 20 MVA can have a significant enough impact that they must comply with the Reliability Standards.'' [60] ISO–NE asserts that inaccurate information for a single generating unit below 100 MVA could impact area studies, and units below 100 MVA may collectively impact system operating limits. Finally, ISO–NE raises a concern that exempting generating units under 100 MVA is inconsistent with the high importance placed by NERC and the Commission on Reliability Standard TPL–001–4 Requirement R1.[61] ISO–NE also maintains that the application of the ''capacity factor exemption'' in MOD–026–1, Attachment 1 is unclear. ISO–NE states that, ''If large units with low capacity factors are also exempted from verification, then overall system reliability will be further reduced.'' [62]

36. Like Idaho Power and ISO–NE., ITC states that it is concerned about the aggregate effect that excluding generators will have on the accuracy of transmission system stability studies, particularly for areas of the transmission system where excluded generating units are more highly concentrated.[63] However, ITC maintains that its concern

[45] NOPR, 144 FERC ¶ 61,205 at P 27–28.

[46] NERC Comments at 4–5.

[47] *Id.* 5, n.7 (citing SERC Engineering Committee Generation Standards Field Test Report at 3 (June 15, 2007) (included in Exhibit E to the NERC Petition)).

[48] *Id.* 5.

[49] ELCON Comments at 2.

[50] EEI Comments at 5.

[51] *Id.*

[52] APS Comments at 4.

[53] *Id.* 3–4.

[54] Idaho Power Comments at 2.

[55] *Id.* 3.

[56] *Id.*

[57] *Id.*

[58] *Id.* 4.

[59] ISO–NE Comments at 2–3.

[60] *Id.* 3.

[61] *Id.* 3–4 (citing *Transmission Planning Reliability Standards,* Order No. 786, 145 FERC ¶ 61,051, at P 3 (2013) (directing NERC to change the VRF for Requirement R1 from medium to high)). TPL–001–4, Requirement R1 requires transmission planners and planning coordinators to maintain system models that represent projected system conditions.

[62] *Id.* 5.

[63] ITC Comments at 5–6.

is ameliorated by the provision in MOD–026–1 allowing transmission planners to compel generators deemed to have ''technically justified'' units below the specified threshold to provide such information in order to more accurately assess system stability.

Commission Determination

37. The Commission is persuaded by the comments submitted by NERC and others that the higher applicability thresholds of Reliability Standards MOD–026–1 and MOD–027–1 are appropriate for a continent-wide standard. Moreover, as NERC and ITC point out, Section 4.2.4 of Reliability Standard MOD–026–1 allows transmission planners to request a model review and related verification information in accordance with Requirement R5 from generators below the applicability threshold when ''technically justified'' (where the simulated unit or plant response does not match the measured unit or plant response). In addition, as APS observed, the higher applicability threshold does not excuse generator owners with small units from the expectation that estimated model data they provide to transmission planners for use in simulations will be accurate. In response to commenters that expressed concerns, in areas where there is a large concentration of small generators, the Commission notes that Regional Entities could develop more stringent requirements, such as a regional standard or regional criteria or process, to assure greater modeling accuracy.[64]

38. We reject ISO–NE's argument that the applicability threshold is somehow inconsistent with the directive to NERC in Order No. 786 to raise the violation severity level from ''medium'' to ''high'' for Reliability Standard TPL–001–4, Requirement R1, which requires transmission planners and planning coordinators to maintain system models.[65] We are not persuaded that the violation severity level for Reliability Standard TPL–001–4, Requirement R1 is relevant to the applicability threshold for Reliability Standards MOD–026–1 and MOD–027–1 or how it substantiates ISO–NE's claim that the applicability threshold reduces overall reliability.[66]

B. Process for Identifying ''Technically Justified'' Generating Units in MOD–026–1

NERC Petition

39. Reliability Standard MOD–026–1 applies to generating units that are connected to the bulk electric system when ''technically justified.'' Specifically, Applicability Section 4.2.4 allows a transmission planner to compel a generator owner to provide model reviews and related information in accordance with Requirement R5 if the transmission planner demonstrates ''that the simulated unit or plant response does not match the measured unit or plant response.''[67] Under such circumstances, generator owners with one or more ''technically justified'' units must comply with Reliability Standard MOD–026–1, even though each such unit's MVA rating is below the stated MVA threshold for applicability.

NOPR

40. In the NOPR, the Commission stated that while it agrees with the intent of this section, the way transmission planners would become aware of discrepancies between simulated units and measured units (i.e., the basis for ''technically justified'' determinations) is unclear. The NOPR stated that the technical justification, or discrepancies between simulated units and measured units, suggests that there should be some benchmark available in the process by which transmission planners identify generator owners for compliance with MOD–026–1. The NOPR observed that the Final Blackout Report on the August 2003 blackout stated that ''the regional councils are to establish and begin implementing criteria and procedures for validating data used in power flow models and dynamic simulations by benchmarking model data with actual system performance.''[68] The Commission sought comment as to whether the means or process for transmission planners to determine whether a generator owner's unit is ''technically justified'' is sufficiently clear and workable. The Commission also requested comment as to whether additional details regarding how the process will be implemented should be included in an attachment to Reliability Standard MOD–026–1.[69]

Comments

41. NERC maintains that the process for transmission planners to determine whether a generator owner's unit is ''technically justified'' is clear and workable. NERC states that the ''technically justified'' provision in Reliability Standard MOD–026–1 expands the applicability of the standard, when necessary, i.e., where the simulated unit or plant response does not match the measured unit or plant response. NERC further states that the ''standard drafting team determined that it is readily apparent when measured data does not match simulations and that such situations will be sufficiently clear and workable.''[70]

42. ELCON, APS, and EEI believe that the process for transmission planners to determine whether a generator owner's unit is ''technically justified'' is clear and workable. ELCON maintains that MOD–026–1 is ''written with sufficient clarity regarding whether a generator owner's unit is 'technically justified.' ''[71] APS supports the ''technical justification'' provision as written, and believes that the provision ''allows transmission planners and planning coordinators the opportunity to address discrepancies between unit simulations and measured unit data,'' which APS asserts will be ''evident and clear.''[72] EEI believes that the standard as written is ''sufficiently clear and enforceable,'' because ''[a]lthough specific unit performance levels can deviate from a model's predicted response, we do not find this to be problematic; rather, planners need latitude to make judgments based on their knowledge of their regions and what's necessary to assess bulk electric system reliability in their area.''[73] EEI states that the standard drafting team ''struck a reasonable balance between providing necessary tools for planners without making [an] unnecessary prescriptive determination as to how to ensure those tools would be applied.''[74] EEI cautions against adding details that ''might unintentionally limit or otherwise undermine the regional knowledge and judgment of transmission planners.''[75] Rather, EEI requests that any changes to MOD–026–

[64] For example, the WECC Modeling and Validation Workgroup concluded that WECC should develop a regional Reliability Standard based upon WECC's existing policy that establishes thresholds of 10 MVA and 20 MVA for single unit and aggregate unit validation respectively.

[65] Transmission Planning Reliability Standards, Order No. 786, 145 FERC ¶ 61,051, at P 3 (2013).

[66] We likewise reject ISO–NE's comments regarding application of the capacity factor exemption in Attachment 1 because ISO–NE fails to substantiate the alleged risk of applying the capacity factor exemption to large units.

[67] Reliability Standard MOD–026–1, Applicability section 4.2.4, n.2 defining ''technical justification.''

[68] U.S.-Canada Power System Outage Task Force (Task Force), Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations (April 2004) (Final Blackout Report), Recommendation 24, *available at http://www.ferc.gov/industries/electric/indus-act/blackout.asp.*

[69] NOPR, 144 FERC ¶ 61,205 at PP 29–30.

[70] NERC Comments at 5.

[71] ELCON Comments at 2.

[72] APS Comments at 5.

[73] EEI Comments at 5.

[74] *Id.* 6.

[75] *Id.*

1 be postponed until industry experience confirms they are needed.

43. Idaho Power and ISO–NE state that the process for transmission planners to determine whether a generator owner's unit is ''technically justified'' is unclear, and both assert that the best fix involves lowering the applicability threshold. Idaho Power states that MOD–026–1 does not clearly define what a ''match'' is or how to evaluate whether a match exists to satisfy the technically justified definition. Idaho Power believes that the Commission should add a provision in MOD–026–1 to include ''technically justified'' units that meet the NERC registry requirements. Idaho Power seeks additional guidance on when a match between simulated and measured unit or plant responses occurs and the process a transmission planner should undertake to demonstrate such a match.[76] ISO–NE states that it is concerned that the test described in MOD–026–1, Applicability Section 4.2.4 would require a disturbance to occur before a transmission planner could determine that a generating unit under 100 MVA is ''technically justified.'' ISO–NE asserts that ''[i]n order for the Transmission Planner to be able to demonstrate that a plant response does not match measured unit or plant response, an event must first occur.'' [77] ISO–NE believes that reducing the threshold from 100 MVA to 20 MVA would ''eliminate the need for this test, or at least reduce its significance.'' [78]

Commission Determination

44. The Commission is persuaded that the basis and associated process for a transmission planner to demonstrate that it is ''technically justified'' for a generator owner below the applicability threshold to comply with Requirement R5 of Reliability Standard MOD–026–1 under Section 4.2.4 is sufficiently clear and workable. We agree with EEI that a more prescriptive, ''one size fits all'' approach could ''unintentionally limit or otherwise undermine the regional knowledge and judgment of transmission planners.'' [79] Further, in the standard drafting team's technical judgment, discrepancies between simulations and measured data will be ''readily apparent.'' [80] APS concurs, stating that such discrepancies will be ''evident and clear.'' [81]

45. Further, the Commission is not persuaded that a change to the applicability thresholds for the Eastern Interconnection, or to the technical justification provision for sub-100 MVA generators, is justified based on ISO–NE's concern that a disturbance would have to occur before a transmission planner could determine that a generating unit is technically justified under Section 4.2.4 of MOD–026–1. ISO–NE is correct that the ''demonstration'' required by the technical justification provision for sub-100 MVA generators anticipates a system event that would indicate a discrepancy between actual and measured unit response. However, local events that occur in the normal course of operations could provide adequate information for a transmission planner to demonstrate the need to invoke the technically justified provision of Reliability Standard MOD–026–1. While the Commission is satisfied that NERC has proposed a Reliability Standard that improves the reliability of the Bulk-Power System on a continent-wide basis, ISO–NE may seek to develop a more stringent regional approach to address its particular concerns, either through the Northeast Power Coordinating Council's regional Reliability Standards process, an ISO–NE policy, or other means. Considering the strong technical support for Section 4.2.4 as written, we believe the soundest approach is to give the industry time to evaluate the effectiveness of the technically justified provision.

C. Should Proposed Reliability Standard MOD–027–1 Include the ''Technically Justified'' Provision

NERC Petition

46. Reliability Standard MOD–027–1 does not contain a provision analogous to Applicability Section 4.2.4 of MOD–026–1, which allows a transmission planner to determine whether technical justification exists to subject a generator owner with units falling below the stated applicability threshold to that Reliability Standard. MOD–027–1 and MOD–026–1 have the same applicability thresholds (100 MVA for the Eastern and Quebec Interconnections, 75 MVA for the Western Interconnection, and 50 and 75 MVA for individual and aggregate nameplate ratings, respectively, in ERCOT). However, these Reliability Standards verify models and data of different functions: MOD–026–1 applies to generator excitation control systems and plant volt/var control functions; MOD–027–1 applies to turbine/governor and load control or active power/frequency control functions.

NOPR

47. In the NOPR, the Commission sought comment as to whether the technical justification provision should also be included in Reliability Standard MOD–027–1 to provide an opportunity for transmission planners to address discrepancies between unit simulations and generator owners' measured unit data.

Comments

48. NERC states that this issue was considered and rejected by the standard drafting team. NERC states that the standard drafting team determined that, in contrast to MOD–026–1, the data required by Reliability Standard MOD–027–1 are more subjective and difficult to verify because the verification of governor response models is not consistent from one event to another. NERC further states that Reliability Standard MOD–026–1 ''addresses the verification of excitation control system dynamic models—whose modeled behavior in the simulation of system events is a large factor in the determination of local stability limits. In contrast, proposed Reliability Standard MOD–027–1 addresses the verification of turbine/governor and load control models—and this equipment rarely, if ever, contributes to a local stability limit.'' [82]

49. EEI, APS and ELCON believe that it is not necessary to include the technical justification provision in MOD–027–1. EEI states that it is unlikely that turbine/governor controls ''will materially contribute to a stability limit, while unit governor response has been shown to be inconsistent from one frequency event to the next thereby making such a provision unworkable and of little value.'' [83] APS agrees, stating that turbine/governor data verified under MOD–027–1 is not consistent across events, and is more difficult to verify than excitation control system data verified under MOD–026–1. Further, APS states that a discrepancy between a modeled response and a measured response ''does not necessarily mean that the model is incorrect. The subjective nature of this determination makes it unsuitable as a standard requirement.'' [84]

50. Idaho Power and ITC believe that the technical justification provision in MOD–026–1 should be included in Reliability Standard MOD–027–1. Idaho

[76] Idaho Power Comments at 4.
[77] ISO–NE Comments at 5.
[78] *Id.* 5.
[79] EEI Comments at 6.
[80] NERC Comments at 5.
[81] APS Comments at 5.
[82] NERC Comments at 6.
[83] EEI Comments at 6–7.
[84] APS Comments at 5.

Power asserts that the ''[e]xclusion of the technical justification provision in this standard could lead to unverified modeling data. For Idaho Power, this would include entire regions of generation connected to the Bulk Electric System that would have unverified modeling data.'' [85] Idaho Power notes that transmission planners perform dynamic simulation studies that require accurate turbine/governor models, including blackstart and under-frequency load shedding simulations. Idaho Power states that blackstart generators may fall below the threshold for compliance with Reliability Standard MOD–027–1 but meet NERC registry requirements.[86] ITC states that the turbine/governor, load control, and active power/frequency control data required by MOD–027–1 is just as necessary for accurate system modeling as the excitation control system and plant volt/var function data required by MOD–026–1. ITC asserts that to deprive a transmission planner of MOD–027–1 models and data from technically justified units ''is just as deleterious to the transmission planner's ability to accurately assess system stability as it would be if the (sic) such problems occurred with respect to MOD–026–1 data.'' [87] ITC further asserts that failing to equip transmission planners with the technically justified provision, particularly for transmission systems that have high concentrations of generator owners below the applicability threshold, ''will significantly degrade the accuracy of system models, and by extension, the overall reliability of the Bulk Electric System.'' [88]

Commission Determination

51. The Commission is persuaded that the technical justification provision is not workable in MOD–027–1 because there is more subjectivity involved in verifying the data pertaining to turbine/governors, the equipment subject to the modeling verification requirements of MOD–027–1. As NERC explains, the modeling data for excitation control systems under MOD–026–1 is objective and consistent, while turbine/governor response model verification under MOD–027–1 is not consistent from one event to another. The Commission agrees with APS that determining whether the difference between a model response and a measured response reflects a model defect is subjective and, therefore, the technical justification provision is inappropriate for MOD–027–1. While commenters supporting the inclusion of the technical justification provision in MOD–027–1 assert that verified data for both excitation control systems and turbine/governor response are necessary for accurate system modeling, they do not adequately address the implementation issues resulting from the subjective and inconsistent nature of turbine/governor response data. Therefore, we agree with commenters that the difference in the equipment being verified makes including the technical justification provision in Reliability Standard MOD–027–1 inappropriate.

D. Whether Generators Need More Flexibility in Verifying Unit Reactive Capability Under MOD–025–2

NERC Petition

52. Reliability Standard MOD–025–2 consists of three requirements and two Attachments that are incorporated into each of the requirements. Attachment 1 contains time tables for conducting verifications and specifications for applicable facilities. Attachment 2 contains forms intended to be used to report the information identified in Attachment 1. Requirements R1 and R2 require generator owners to verify Real Power capability and Reactive Power capability, respectively, and Requirement R3 requires transmission owners to verify Reactive Power capability in accordance with Attachment 1. For each Requirement, Attachment 2 establishes a 90 calendar day period within which generator owners and transmission owners must submit information of ''either: (i) The date the data is recorded for a staged test; or (ii) the date the data is selected for verification using historical operational data.''

Comments

53. While not addressed in the NOPR, G&T Cooperatives, EEI and ELCON express concern about what they believe is a lack of flexibility in the reactive power verification requirements in Reliability Standard MOD–025–2. G&T cooperatives assert that ''MOD–025–2 would establish a needlessly prescriptive approach to verifying unit reactive capability.'' Therefore, while they support the Commission's approval of MOD–025–2, G&T Cooperatives request that the Commission ''direct NERC to develop a revised version of MOD–025–2 that permits Generator Owners the flexibility to verify unit reactive capability using the method that best meets the individual needs of that Generator Owner provided it can demonstrate that the method is effective.'' [89]

54. ELCON views MOD–025–2 as ''needlessly prescriptive'' and asserts that ''at many of the industrial facilities of ELCON members with 'behind the meter' generation, its implementation would raise significant economic and safety concerns and be technically and economically infeasible.'' [90] While believing that Reliability Standard MOD–025–2 ''may inhibit companies from making use of modeling tools,'' EEI states that ''rather than remand the MOD–025–2 standard proposed for approval, EEI envisions that the standard can serve as an initial basis for now.'' [91]

Commission Determination

55. The Commission is not persuaded that Reliability Standard MOD–025–2 provides insufficient flexibility for generator owners and transmission owners to verify reactive power capability, or that it is overly prescriptive. Therefore, the Commission will not direct modification of the Reliability Standard. The process for verifying reactive capability under MOD–025–2, Requirement 2.2, requires an entity to submit information to its transmission planner (either through Attachment 2 to MOD–025–2 or a form containing the same information) within 90 calendar days of either: (i) The date the data are recorded for a staged test; or (ii) the date the data are selected for verification using historical operational data. This requirement affords a generator owner or transmission owner with the flexibility to perform verification using either staged test or historical operating data. Further, the standard drafting team rejected the G&T Cooperatives' view that new analytical software tools and engineering studies alone can adequately model unit reactive capability.[92]

56. Rather, the Commission agrees with EEI's suggestion that during the implementation of Reliability Standard MOD–025–2, NERC, in consultation with EEI and other industry representatives, should consider potential modifications to MOD–025–2 ''that would better reflect rapidly evolving modeling technology, as well

[85] Idaho Power Comments at 5.

[86] *Id.* (noting that Reliability Standard EOP–005–2 Requirement R6 requires transmission operators to verify the dynamic performance of blackstart generators).

[87] ITC Comments at 6.

[88] *Id.*

[89] G&T Cooperatives Comments at 2.

[90] ELCON Comments at 2.

[91] EEI Comments at 2.

[92] *See, e.g.,* NERC Petition, Exhibit E (Summary of the Reliability Standard Development Proceeding and Complete Record of Development of Proposed Reliability Standard) section entitled ''Consideration of Comments on Draft Standard'' at 75.

as successful methods and processes already in use by some companies.'' [93]

E. Assignment of Violation Severity Levels

1. Violation Severity Level for MOD–026–1, Requirement R6 and MOD–027–1, Requirement R5

NOPR

57. In the NOPR, the Commission expressed concern regarding the proposed violation severity level for Requirement R6 of MOD–026–1 and Requirement R5 of MOD–027–1. For those requirements, NERC proposed a ''severe'' violation severity level when a transmission planner's written response that a generation owner's verified model is useable ''omitted confirmation for all specified model criteria'' in the requirement. NERC did not propose any violation severity level for a violation of the last sentence of these requirements: ''If the model is not useable, the [transmission planner] shall provide a technical description of why the model is not useable.'' The Commission noted that compliance with this obligation is no less important than compliance with the other obligations of these requirements. The Commission further stated that the lack of a violation severity level for this type of violation is inconsistent with the Commission's Violation Severity Level Guideline 3, because the proposed violation severity level does not address all of the obligations in these requirements. Therefore, the Commission proposed to direct NERC to submit a violation severity level that addresses a violation of the last sentence of Requirement R6 of MOD–026–1 and Requirement R5 of MOD–027–1.

Commission Determination

58. No entity submitted comments on this matter. Accordingly, as proposed in the NOPR, we direct NERC to submit a violation severity level that addresses a transmission planner's obligation to provide a technical description of why a model submitted by a generation owner is not usable for Requirement R6 of MOD–026–1 and Requirement R5 of MOD–027–1.

2. Violation Severity Level for PRC–024–1, Requirements R1 and R2

NOPR

59. In the NOPR, the Commission addressed NERC's proposal to assign a ''severe'' violation severity level for a violation of Requirements R1 and R2 of PRC–024–1 when a generator owner fails to set its generator frequency or voltage protective relays so that they do not trip within the criteria listed within Requirements R1 and R2 unless there is a documented and communicated regulatory or equipment limitation under Requirement R3. We observed that Requirements R1 and R2 of PRC–024–1 include three and four bulleted exceptions, respectively, to the requirement that the generator frequency or voltage protective relays not trip applicable generating unit(s) within the ''no-trip zone'' of Attachment 1or 2 to that standard. For Requirements R1 and R2, only the third and fourth exception, respectively, relate to a regulatory or equipment limitation in accordance with Requirement R3. Therefore, the Commission noted that the wording of the violation severity level for Requirements R1 and R2 could be read to mean that a generator owner that set generator frequency or voltage protective relaying to trip within the ''no-trip zone'' based on either the first or second exception in Requirement R1 and either the first, second or third exception in R2, violated that Requirement with a severe violation severity level. To avoid such an interpretation, the Commission asked NERC to confirm in its comments that a generator owner will not violate Requirement R1 or R2 if it sets generator frequency or voltage protective relaying to trip within the ''no-trip zone'' based upon the exceptions for Requirements R1 and R2.

Commission Determination

60. In its comments, NERC responded to the Commission's request by stating that ''[c]onsistent with the NOPR, NERC confirms this statement.'' [94] Accordingly, with that clarification, the Commission approves the violation severity level for Requirements R1 and R2 of PRC–024–1.

V. Information Collection Statement

61. The following collections of information contained in the Final Rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[95] OMB's regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.[96] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing or recordkeeping requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

62. The Commission will submit these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. The Commission received comments on specific requirements in the Reliability Standards approved in this Final Rule. However, the Commission received no comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondents' burden, including the use of automated information techniques.

63. This Final Rule approves five Reliability Standards: MOD–025–2, MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1. Reliability Standard MOD–025–2 would replace Reliability Standards MOD–024–1 and MOD–025–1. In Order No. 693, the Commission did not approve or remand MOD–024–1 and MOD–025–1, as they were identified as ''fill-in-the-blank'' Reliability Standards for which NERC had not submitted regional procedures.

64. *Public Reporting Burden:* The burden and cost estimates below are based on the increase in the reporting and recordkeeping burden imposed by the approved Reliability Standards. Our estimate of the number of respondents affected is based on the NERC Compliance Registry as of July 30, 2013.[97] According to the Compliance Registry, NERC has registered 901 generator owners and 187 transmission planners within the United States. Currently, synchronous condensers are not included in the NERC Compliance Registry, and the standard drafting team stated that the number of transmission owners who own synchronous condensers is extremely low.

65. The burden estimates reflect the standards and the number of affected entities (e.g., the generator owner's one-time burden to develop testing procedures, verification process, and process for collection of data).

[93] EEI Comments at 3.

[94] NERC Comments at 7.

[95] 44 U.S.C. 3507(d) (2006).

[96] 5 CFR 1320.11 (2013).

[97] NERC Compliance Registry (July 30, 2013), *available at http://www.nerc.com/pa/comp/Registration%20and%20Certification%20DL/NERC_Compliance_Registry_Matrix_Summary20130730.pdf.*

FERC–725G	Number of respondents [98] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)	Total annual cost [99]
PRC–019–1 (Coordination of Generating Unit or Plant Capabilities, Voltage Regulating Controls, and Protection)					
Develop coordination and relay settings procedures	738 GO	1	8	5,904 one-time	$307,008 one-time ($52/hr)
Relay Settings	738 GO	1	8	5,904	$413,280 ($70/hr)
Evidence Retention	738 GO	1	1	738	$20,664 ($28/hr)
Total				12,546	$740,952
PRC–024–1 (Generator Frequency and Voltage Protective Relay Settings)					
Develop coordination and relay settings procedures	738 GO	1	8	5,904 one-time	$307,008 one-time ($52/hr)
Relay Settings	738 GO	1	8	5,904	$413,280 ($70/hr)
Evidence Retention	738 GO	1	1	738	$20,664 ($28/hr)
Total				12,546	$740,952

FERC–725L	Number of respondents [98] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)	Total annual cost [99]
MOD–025–2 (Verification and Data Reporting of Generator Real and Reactive Power Capability and Synchronous Condenser Reactive Power Capability)					
Develop testing procedures, verification process, and process for collection of data	738 GO	1	8	5,904 one-time	$307,008 one-time ($52/hr)
Attachment 2	738 GO	1	6	4,428	$309,960 ($70/hr)
Evidence Retention	738 GO	1	1	738	$20,664 ($28/hr)
Total				11,070	$637,632
MOD–026–1 (Verification of Models and Data for Generator Excitation Control System or Plant Volt/Var Control Functions)					
Develop testing procedures, verification process, and process for collection of data	356 GO	1	8	2,848 one-time	$148,096 one-time ($52/hr)
Instructions for obtaining excitation control system or plant voltage/variance control function model	187 TP	1	8	1,496 one-time	$104,720 one-time ($70/hr)
Documentation on generator verification	356 GO	1	8	2,848	$199,360 ($70/hr)
Evidence Retention	543 GO and TP	1	1	543	$15,204 ($28/hr)
Total				7,735	$467,380
MOD–027–1 (Verification of Models and Data for Turbine/Governor and Load Control or Active Power/Frequency Control Functions)					
Develop testing procedures, verification process, and process for collection of data	356 GO	1	8	2,848 one-time	$148,096 one-time ($52/hr)
Instructions for obtaining turbine/governor and load control or active power/frequency control model	187 TP	1	8	1,496 one-time	$104,720 one-time ($70/hr)

FERC–725L	Number of respondents [98] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)	Total annual cost [99]
Documentation on generator verification	356 GO	1	8	2,848	$199,360 ($70/hr)
Evidence Retention	543 GO and TP	1	1	543	$15,204 ($28/hr)
Total				7,735	$467,380
Total for RM13–16					$3,054,296 ($1,627,640 without one-time costs)

Title: Mandatory Reliability Standards for the Bulk-Power System.

Action: Revisions to FERC–725G and FERC–725L.

OMB Control Nos: 1902–0252 and 1902–0261.

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

Frequency of Responses: One-time, every five years, and every ten years.

Necessity of the Information: The proposed approval of the five Reliability Standards noted above implements the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System.

Internal Review: The Commission has reviewed the proposed approval to the Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

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

67. For submitting comments concerning the collection of information and the associated burden estimates, please send your comments to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM13–16–000 and OMB Control Number 1902–0252 and 1902–0261.

VI. Regulatory Flexibility Act Certification

68. The Regulatory Flexibility Act of 1980 (RFA) [100] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA's) Office of Size Standards develops the numerical definition of a small business.[101] Since the issuance of the Proposed Rule, the SBA has revised its size standard for electric utilities from an output based standard (megawatt hours) to number of employees (including affiliates). Under SBA's new size standards, Generator Owners and Transmission Planners likely come under one of four categories and associated size thresholds: [102]

- Hydroelectric power generation at 500 employees.
- Fossil fuel electric power generation at 750 employees.
- Other electric power generation (e.g. solar, wind, geothermal, and others) at 250 employees.
- Electric bulk power transmission and control at 500 employees

69. According to US economic census data,[103] over half of the firms in the categories above are small. However, currently FERC does not have information on how the economic census data compares with entities registered with NERC and is unable to estimate the number of small generator owners and transmission planners based on the new SBA definition. Regardless, FERC recognizes that the rule will impact small GOs and TPs and estimates the economic impact on each type of entity below.

70. Proposed Reliability Standards MOD–025–2, MOD–026–1, MOD–027–1, PRC–019–1 and PRC–024–1, MOD–025–2 help ensure that generators remain in operation during specified voltage and frequency excursions, properly coordinate protective relays and generator voltage regulator controls, and ensure that generator models accurately reflect the generator's capabilities and equipment performance. The Commission estimates that the small entities to which Reliability Standards PRC–019–1, PRC–024–1 and MOD–025–1 applies will

[98] GO = Generator Owner, TP = Transmission Planner.

Assuming 10 generators per generator owner, using EIA–860 2012 generator data (*http://www.eia.gov/electricity/data/eia860/*) total number of units > 20 MW are 7,379, which results in 738 generator owners. Note that the number of generator owner respondents used to calculate the public reporting burden for MOD–026–1 and MOD–027–1 is 356, due to the higher applicability threshold for those Reliability Standards.

[99] The estimates for cost per hour are derived as follows:

$52/hour, the average of the salary plus benefits for an engineer, from Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm andhttp://www.bls.gov/news.release/ecec.nr0.htm*

$70/hour, the average of the salary plus benefits for a manager and an engineer, from Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm.*

$28/hour, based on a Commission staff study of record retention burden cost.

[100] 5 U.S.C. 601–612 (2006).

[101] 13 CFR 121.101 (2013).

[102] 13 CFR 121.201, Sector 22, Utilities.

[103] Data and further information is available from SBA at *http://www.sba.gov/advocacy/849/12162.*

incur compliance [104] and paperwork/record keeping costs [105] totaling $655,228 ($13,372 per generator owner). For Reliability Standards MOD–026–1 and MOD–027–1, the Commission estimates that a subset of the small generator owner entities will incur compliance and paperwork/record keeping costs of $198,176 ($9,008 per generator owner).[106] This will result in a per entity compliance and paperwork/record-keeping cost for the subset of generator owners complying with MOD–026–1 and MOD–027–1 of $22,380 [107] and the remaining small generator owners who only have to comply with PRC–019–1, PRC–024–1 and MOD–025–1 incurring a $13,372 cost per entity, as previously described. Additionally, small transmission planner entities will incur compliance and paperwork/record keeping costs [108] totaling $49,392 ($1,176 per transmission planner) [109] to comply with MOD–026–1 and MOD–027–1.

71. The Commission does not consider the estimated costs per small entity to have a significant economic impact on a substantial number of small entities. Accordingly, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

VII. Environmental Analysis

72. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[110] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[111] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

VIII. Document Availability

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

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

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

IX. Effective Date and Congressional Notification

76. These regulations are effective May 27, 2014. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–06725 Filed 3–26–14; 8:45 am]

BILLING CODE 6717–01–P

[104] Assuming 50 hours per generator owner per reliability standard for relay settings/testing and other non-paperwork based on $70/hour. These are non-paperwork related costs, not associated with the burden described in the information collection section above.

[105] This cost came from the above PRC–019–1, PRC–024–1, and MOD–025–2 tables in the information collection section.

[106] These two figures were not calculated correctly in the NOPR and have been corrected here.

[107] This figure was not calculated correctly in the NOPR and has been corrected here.

[108] This cost came from the above MOD–026–1 and MOD–027–1 tables in the information collection section.

[109] These two figures were not calculated correctly in the NOPR and have been corrected here.

[110] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[111] 18 CFR 380.4(a)(2)(ii).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM14–6–000]

Annual Update of Filing Fees

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with 18 CFR 381.104, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Management, Administrative, and Payroll System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2013.

DATES: *Effective Date:* April 28, 2014.

FOR FURTHER INFORMATION CONTACT: Raymond D. Johnson Jr., Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE., Room 42–66, Washington, DC 20426, 202–502–8402.

SUPPLEMENTARY INFORMATION:

Document Availability

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

From FERC's Web site on the Internet, this information is available in the eLibrary (formerly FERRIS). The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Annual Update of Filing Fees

(Issued March 20, 2014)

The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2013 costs. The adjusted fees announced in this notice are effective April 28, 2014. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

Fees Applicable to the Natural Gas Policy Act	
1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)	$ 12,070
Fees Applicable to General Activities	
1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a))	$ 24,260
2. Review of a Department of Energy remedial order:.	
Amount in controversy	
$ 0–9,999. (18 CFR 381.303(b))	$ 100
$ 10,000–29,999. (18 CFR 381.303(b))	$ 600
$ 30,000 or more. (18 CFR 381.303(a))	$ 35,410
3. Review of a Department of Energy denial of adjustment:.	
Amount in controversy	
$ 0–9,999. (18 CFR 381.304(b))	$ 100
$ 10,000–29,999. (18 CFR 381.304(b))	$ 600
$ 30,000 or more. (18 CFR 381.304(a))	$ 18,570
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a))	$ 6,960
Fees Applicable to Natural Gas Pipelines	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	* $ 1,000
Fees Applicable to Cogenerators and Small Power Producers	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	$ 20,860
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	$ 23,610

* This fee has not been changed.

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Anton C. Porter,

Executive Director.

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 381—FEES

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

■ 2. In 381.302, paragraph (a) is amended by removing ''$ 24,370'' and adding ''$ 24,260'' in its place.

§ 381.303 [Amended]

■ 3. In 381.303, paragraph (a) is amended by removing ''$ 35,580'' and adding ''$ 35,410'' in its place.

§ 381.304 [Amended]

■ 4. In 381.304, paragraph (a) is amended by removing ''$ 18,650'' and adding ''$ 18,570'' in its place.

§ 381.305 [Amended]

■ 5. In 381.305, paragraph (a) is amended by removing ''$ 6,990'' and adding ''$ 6,960'' in its place.

§ 381.403 [Amended]

■ 6. Section 381.403 is amended by removing ''$ 12,130'' and adding ''$ 12,070'' in its place.

§ 381.505 [Amended]

■ 7. In 381.505, paragraph (a) is amended by removing ''$ 20,960'' and adding ''$ 20,860'' in its place and by removing ''$ 23,720'' and adding ''$ 23,610'' in its place.

[FR Doc. 2014–06596 Filed 3–26–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 447

[Docket No. ATF–25I; AG Order No. 3423–2014]

RIN 1140–AA45

Importation of Arms, Ammunition and Defense Articles—Removal of Certain Defense Articles Currently on the U.S. Munitions Import List That No Longer Warrant Import Control Under the Arms Export Control Act (2011R–25P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Justice is amending Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulations to remove those defense articles currently on the U.S. Munitions Import List that ATF by delegation has determined no longer warrant import control under the Arms Export Control Act.

DATES: *Effective date:* This interim final rule is effective April 28, 2014.

Comment date: Written comments must be postmarked and electronic comments must be submitted on or before June 25, 2014. 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 number (ATF 25I), by any of the following methods—

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 648–9741.
- *Mail:* George M. Fodor, Mailstop 6N–602, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE., Washington, DC 20226; *ATTN: ATF 25I.*

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to the Federal eRulemaking portal, *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: George M. Fodor, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE, Washington, DC 20226; telephone: (202) 648–7070.

SUPPLEMENTARY INFORMATION:

I. Background

Section 38 of the Arms Export Control Act of 1976 (AECA), 22 U.S.C. 2778, as amended, authorizes the President, in furtherance of world peace and the security and foreign policy of the United States, to control the import and the export of defense articles and defense services. 22 U.S.C. 2778(a)(1). The AECA also authorizes the President to designate those items that shall be considered defense articles and defense services for the purposes of section 38, and to promulgate regulations for the import and export of such articles and services. *Id.*

Through Executive Order 13637 of March 8, 2013, the President delegated his AECA authority to the Secretary of State with respect to the export and temporary import of defense articles and defense services. E.O. 13637, 78 FR 16129. The International Traffic in Arms Regulations (ITAR), 22 CFR part 120 *et seq.,* implement the Secretary of State's delegated authority and list the defense articles and defense services regulated for export, re-export, and temporary import by the Secretary of State. The items so designated constitute the State Department's regulatory United States Munitions List (USML) of the ITAR.

Also through Executive Order 13637, the President delegated to the Attorney General the authority under the AECA to control the permanent import of defense articles and defense services. E.O. 13637, 78 FR 16129. In exercising that authority, the Attorney General ''shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States.'' *Id.* at sec. 1(n)(ii). Controlling the import of defense articles and defense services furthers United States foreign policy and national security interests and is a foreign affairs function of the U.S. Government. That executive order also requires that the Attorney General obtain the concurrence of the Secretary of State and the Secretary of Defense and provide notice to the Secretary of Commerce for designations, including changes in designations, of defense articles and defense services subject to permanent import control. *Id.*

To distinguish the regulatory list of defense articles and defense services controlled by the Attorney General for permanent import from the regulatory list of defense articles and defense services controlled by the Secretary of State for export and temporary import, the list of defense articles and defense services controlled by the Attorney General for permanent import is the United States Munitions Import List (USMIL). The regulations governing this list appear at 27 CFR part 447.

The Attorney General delegated administration of the import provisions of the AECA to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130(a). ATF promulgated regulations that implement the provisions of section 38 of the AECA in 27 CFR part 447. With guidance from the Department of State and concurrence from the Departments of State and Defense pursuant to Executive Order 13637, ATF administers the list of items subject to import control under the USMIL, at 27 CFR 447.21.

II. The President's Export Control Reform Initiative

In August 2009, the President directed a broad-based interagency review of the United States export control system in part to identify additional ways to enhance national security, better focus resources on protecting items for export that need to be protected, and provide clarity to make it easier for exporters to comply with regulations and for the United States Government to administer and enforce the regulations. As the result of a comprehensive review of export controls, it was determined that certain defense articles and defense services listed on the USML no longer warrant control for export purposes by the Secretary of State pursuant to the AECA. Pursuant to section 38(f) of the Arms Export Control Act, those defense articles are being transferred to the Department of Commerce's Commerce Control List (CCL) for export control under the authority of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*

In effecting the President's export control reform initiative, the export control reform interagency task force identified a way to improve the United States import control system to enhance national security and focus resources on protecting items for import that need to be protected. Accordingly, the task force requested ATF to identify those defense articles that no longer warrant control on the USMIL.

III. Interim Final Rule

ATF reviewed the USMIL in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' and the export control reform interagency task force request. Those defense articles on the USMIL that ATF (acting through authority delegated from the President to the Attorney General, and in turn delegated by the Attorney General to ATF) has determined no longer warrant import control under the AECA are being removed from the USMIL. Controlling the permanent import of defense articles furthers United States foreign policy and national security interests and is a foreign affairs function of the U.S. Government. This interim final rule amends the regulations at 27 CFR 447.21 by removing those defense articles currently on the USMIL determined to no longer warrant import control under the AECA.

The Department is removing from the USMIL Category I—Firearms, paragraph (e), ''Riflescopes manufactured to military specifications and specifically designed or modified components

therefor.'' The defense articles currently covered by Category I, paragraph (e) are readily available through diverse domestic commercial sources and they do not present a significant concern for trafficking or diversion into illicit channels. The defense articles currently covered by Category I, paragraph (e) do not warrant import control under the AECA. The Department reserves this paragraph.

In Category III—Ammunition, the Department is removing and then reserving paragraphs (c), ''Ammunition belting and linking machines,'' and (d), ''Ammunition manufacturing machines and ammunition loading machines (except handloading ones).'' These defense articles are costly, difficult to maintain, too heavy for easy transport, and readily available from domestic vendors in the United States. These defense articles do not pose a trafficking and diversion threat warranting import control under the AECA.

In addition, in Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines, the Department is removing and reserving paragraph (f), ''Ablative materials fabricated or semi-fabricated from advanced composites (*e.g.,* silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.'' Such materials are a low threat to domestic security and are readily available in the domestic market.

In Category VI—Vessels of War and Special Naval Equipment, the Department is clarifying paragraph (a) to read: ''Vessels of War, if they are armed and equipped with offensive or defensive weapons systems, including but not limited to amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels, service craft, experimental types of naval ships, and any vessels specifically designed or modified for military purposes or other surface vessels equipped with offensive or defensive military systems.'' The new text focuses precisely on defense articles that might threaten domestic security or enable terrorist activities.

Further in Category VI—Vessels of War and Special Naval Equipment, the Department is revising paragraph (b) to read: ''Turrets and gun mounts, special weapons systems, protective systems, and other components, parts, attachments, and accessories specifically designed or modified for such articles on combatant vessels.'' The new language focuses on defense articles that might threaten domestic security or enable terrorist activities. Also in Category VI, the Department is removing and reserving paragraphs (c) and (d). Mine sweeping equipment, harbor entrance detection devices, and related components and controls have numerous domestic suppliers and are low threats to domestic security. Additionally, the Department is revising the note in Category VI to clarify that the examples of vessels of war provided in Category VI must be armed and equipped with offensive or defensive weapon systems to be considered a defense article on the USMIL.

The Department is updating Category VII—Tanks and Military Vehicles by removing and reserving paragraph (g), ''Engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.'' The defense articles listed in Category VII, paragraph (g) are substantially the same as those commercially available in the domestic market and not likely to be diverted for criminal use. The Department is revising paragraph (h) and including two explanatory notes. The Department is also adding a new paragraph (i), with a corresponding new note to Category VII to clarify that this category includes within its scope other ground vehicles that meet four technical parameters in the Wassenaar Arrangement's Munitions List Category 6.

In Category XIV—Toxicological Agents and Equipment and Radiological Equipment, the Department is removing and reserving paragraph (b) (biological agents) and revising paragraph (c) to limit regulation to all specifically designed or modified equipment, including components, parts, accessories, and attachments, for disseminating the articles in paragraph (a) of this category. The U.S. Department of Health and Human Services and the U.S. Department of Agriculture regulate the import and use of biological agents under such acts as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107–188. Therefore, continued inclusion of these items on the USMIL is unnecessary to ensure domestic security. Further, by removing and reserving paragraph (d) (nuclear radiation detection and measuring devices manufactured to military specification) and paragraph (e) (components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category), the Department recognizes the domestic availability of these articles and the associated low threat to domestic security.

Finally, the Department is updating policies related to Category XVI—Nuclear Weapons Design and Test Equipment, to the extent that imports of these defense articles are under the control of the Department of Energy pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-proliferation Act of 1978, as amended, or are government transfers authorized pursuant to these Acts. The Department is removing and reserving paragraph (a), (any article, material, equipment, or device, which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices), revising paragraph (b) to include modeling or simulation tools that model or simulate the environments generated by nuclear detonations or the effects of these environments on systems, subsystems, components, structures, or humans, and adding an explanatory note after paragraph (b) to indicate that Category XVI does not include equipment, technical data, or services controlled by the Department of Energy pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended, or are government transfers authorized pursuant to these Acts.

Pursuant to Executive Order 13637, the Department of State and the Department of Defense have concurred on this interim final rule amending the USMIL.

IV. Statutory and Executive Order Review

A. Executive Order 12866

Because the amendments to 27 CFR part 447 involve a foreign affairs function of the United States, Executive Order 12866 does not apply.

B. Executive Order 13132

This regulation will not 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. Therefore, in accordance with section 6 of Executive Order 13132, ''Federalism'', the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in subsections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform.''

D. Administrative Procedure Act

As reflected in 27 CFR 447.54, amendments made to 27 CFR part 447 are exempt from the rulemaking provisions of 5 U.S.C. 553 because this part involves a foreign affairs function of the United States. See 5 U.S.C. 553(a)(1). Accordingly, it is not necessary to issue this rule using the notice and public procedure set forth in 5 U.S.C. 553(b), and the requirement of a delayed effective date in 5 U.S.C. 553(d) does not apply. The Department of Justice nevertheless wishes to provide the public with an opportunity to participate in the regulatory process and provide feedback pursuant to Executive Order 13563, ''Improving Regulation and Regulatory Review.'' Accordingly, the Department is publishing this rule as an interim final rule with a 90-day provision for public comment and without prejudice to its determination that controlling the import of defense articles is a foreign affairs function of the United States Government.

E. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this interim final rule because the Department is not publishing the rule as a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. See 5 U.S.C. 601 *et seq.*

F. Small Business Regulatory Enforcement Fairness Act of 1996

This 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 rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

G. 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 actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

H. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no reporting or recordkeeping requirements.

Public Participation

A. Comments Sought

The Department is requesting comments on the interim final rule from all interested persons. The Department is also specifically requesting comments on the clarity of this interim final rule and how it may be made easier to understand.

All comments must reference this document docket number (ATF 25I), be legible, and include your name and mailing address. The Department will treat all comments as originals and will not acknowledge receipt of comments.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

B. Confidentiality

Comments, whether submitted electronically or on paper, will be made available for public viewing at ATF, and on the Internet as part of the eRulemaking initiative, and are subject to the Freedom of Information Act. Commenters who do not want their name or other personal identifying information posted on the Internet should submit their comment by mail or facsimile, along with a separate cover sheet that contains their personal identifying information. Both the cover sheet and comment must reference this docket number. Information contained in the cover sheet will not be posted on the Internet. Any personal identifying information that appears within the comment will be posted on the Internet and will not be redacted by ATF.

Any material that the commenter considers to be inappropriate for disclosure to the public should not be included in the comment. Any person submitting a comment shall specifically designate that portion (if any) of the comment that contains material that is confidential under law (*e.g.,* trade secrets, processes, etc.). Any portion of a comment that is confidential under law shall be set forth on pages separate from the balance of the comment and shall be prominently marked ''confidential'' at the top of each page. Confidential information will be included in the rulemaking record but will not be disclosed to the public. Any comments containing material that is not confidential under law may be disclosed to the public. In any event, the name of the person submitting a comment is not exempt from disclosure.

C. Submitting Comments

Comments may be submitted in any of three ways:

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments must appear in minimum 12 point font size (.17 inches), include your mailing address, and be signed, and may be of any length.
- *Facsimile:* You may submit comments by facsimile transmission to (202) 648–9741. Faxed comments must:

(1) Be legible and appear in minimum 12 point font size (.17 inches);

(2) Be on 8½″ x 11″ paper;

(3) Contain a legible, written signature; and

(4) Be no more than five pages long. ATF will not accept faxed comments that exceed five pages.

- *Federal eRulemaking Portal:* To submit comments to ATF via the federal eRulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

Disclosure

Copies of this interim rule and the comments received will be available for public inspection online at *www.regulations.gov* and by appointment during normal business hours at: ATF Reading Room, Room 1E–062, 99 New York Avenue NE., Washington, DC 20226, telephone (202) 648–8740.

Drafting Information

The author of this document is George M. Fodor, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 447

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegation, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, part 447 of title 27 of the Code of Federal Regulations is amended as follows:

PART 447—IMPORTATION OF ARMS, AMMUNITION AND DEFENSE ARTICLES

■ 1. The authority citation for 27 CFR part 447 continues to read as follows:

Authority: 22 U.S.C. 2778.

■ 2. Amend § 447.21 as follows:
■ a. In Category I, remove and reserve paragraph (e).
■ b. In Category III, remove and reserve paragraphs (c) and (d).
■ c. In Category IV, remove and reserve paragraph (f).
■ d. In Category VI:
■ (1) Revise paragraph (a);
■ (2) Revise paragraph (b);
■ (3) Remove and reserve paragraphs (c) and (d); and
■ (4) Revise the introductory text of the ''Note'' after paragraph (e).
■ e. In Category VII:
■ (1) Remove and reserve paragraph (g);
■ (2) Revise paragraph (h);
■ (3) Add a new paragraph (i) after paragraph (h);
■ (4) Revise the ''Note'' that now appears after the newly inserted paragraph (i); and
■ (5) Add a second ''Note'' and a third ''Note'' after the newly inserted paragraph (i).
■ f. In Category XIV:
■ (1) Remove and reserve paragraph (b);
■ (2) Revise paragraph (c); and
■ (3) Remove and reserve paragraphs (d) and (e).
■ g. In Category XVI:
■ (1) Remove and reserve paragraph (a);
■ (2) Revise paragraph (b); and
■ (3) Add a ''Note'' after paragraph (b).

These amendments to § 447.21 read as follows:

§ 447.21 The U.S. Munitions Import List.

* * * * *

CATEGORY I—FIREARMS

* * * * *

(e) [Reserved]

* * * * *

CATEGORY III—AMMUNITION

* * * * *

(c) [Reserved]
(d) [Reserved]

* * * * *

CATEGORY IV—LAUNCH VEHICLES, GUIDED MISSILES, BALLISTIC MISSILES, ROCKETS, TORPEDOES, BOMBS AND MINES

* * * * *

(f) [Reserved]

* * * * *

CATEGORY VI—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT

(a) Vessels of War, if they are armed and equipped with offensive or defensive weapon systems, including but not limited to amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels, service craft, experimental types of naval ships, and any vessels specifically designed or modified for military purposes or other surface vessels equipped with offensive or defensive military systems.

(b) Turrets and gun mounts, special weapons systems, protective systems, and other components, parts, attachments, and accessories specifically designed or modified for such articles on combatant vessels.

(c) [Reserved]
(d) [Reserved]
(e) * * *

Note: The term ''vessels of war'' includes, but is not limited to, the following, if armed and equipped with offensive or defensive weapons systems:''.

* * * * *

CATEGORY VII—TANKS AND MILITARY VEHICLES

* * * * *

(g) [Reserved]

(h) Tank and military vehicle parts, components, accessories, attachments, and associated equipment for offensive or defensive systems for the articles in this category, as follows:

(1) Armored hulls, armored turrets and turret support rings;

(2) Active protection systems (i.e., defensive systems that actively detect and track incoming threats and launch a ballistic, explosive, energy or electromagnetic countermeasure(s) to neutralize the threat prior to contact with a vehicle);

(3) Composite armor parts and components;

(4) Spaced armor components and parts, including slat armor parts and components;

(5) Reactive armor and components;

(6) Electromagnetic armor parts and components, including pulsed power;

(7) Gun mount, stabilization, turret drive, and automatic elevating systems;

(8) Kits specifically designed to convert a vehicle in this category into either an unmanned or a driver-optional vehicle. For a kit to be controlled by this paragraph it must include all of the following:

(i) Remote or autonomous steering;

(ii) Acceleration and braking; and

(iii) A control system;

(9) Fire control computers, stored management systems, armaments control processors, vehicle weapon interface units and computers;

(10) Electro-optical sighting systems; and

(11) Laser rangefinder or target designating devices.

(i) Other ground vehicles having all of the following:

(1) Manufactured or fitted with materials or components to provide ballistic protection to level III (NIJ 0108.01, September 1985) or better;

(2) A transmission to provide drive to both front and rear wheels simultaneously, including those vehicles having additional wheels for load bearing purposes whether driven or not;

(3) Gross Vehicle Weight Rating (GVWR) greater than 4,500 kg; and

(4) Designed or modified for off-road use.

Note: An ''amphibious vehicle'' in Category VII(f) is a vehicle or chassis that is equipped to meet special military requirements, and that is designed or adapted for operation on or under water, as well as on land.

Note: Engines and engine parts are not included in paragraph (h) of Category VII.

Note: Paragraph (i) of Category VII does not apply to civil vehicles designed or modified for transporting money or valuables.

* * * * *

CATEGORY XIV—TOXICOLOGICAL AGENTS AND EQUIPMENT AND RADIOLOGICAL EQUIPMENT

* * * * *

(b) [Reserved]

(c) All specifically designed or modified equipment, including components, parts, accessories, and attachments for disseminating the articles in paragraph (a) of this category.

(d) [Reserved]
(e) [Reserved]

* * * * *

CATEGORY XVI—NUCLEAR WEAPONS DESIGN AND TEST EQUIPMENT

(a) [Reserved]

(b) Modeling or simulation tools that model or simulate the environments generated by nuclear detonations or the effects of these environments on systems, subsystems, components, structures, or humans.

Note: Category XVI does not include equipment, technical data, or services controlled by the Department of Energy pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-

Proliferation Act of 1978, as amended, or are government transfers authorized pursuant to these Acts.

* * * * *

Dated: March 21, 2014.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2014–06778 Filed 3–26–14; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 19, 26, 27, and 73

[Docket No. TTB–2014–0004; T.D. TTB–119]

RIN 1513–AB97

Electronic Submission of Forms, the Finished Products Records for Distilled Spirits Plants, and Closures on Certain Distilled Spirits Products

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Direct final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is amending its regulations regarding the electronic submission of forms to provide for the electronic submission to TTB of copies of certain forms, where the original is to be retained by the submitter along with other records. This amendment removes a barrier that industry members have faced when trying to apply for permits completely by electronic means. TTB is also amending its regulations to address circumstances where TTB requires certain information to be submitted to other agencies. Specifically, the amendments provide that TTB requirements for information to be submitted to another agency may be met by the electronic submission of the information, as long as the other agency has provided for such a submission of information by electronic means.

In addition, TTB is amending its regulations governing the records that distilled spirits plant (DSP) proprietors must keep of finished products. Specifically, TTB is removing the requirement that DSP proprietors keep a daily summary record of the kind of distilled spirits bottled or packaged.

Finally, TTB is amending its regulations regarding closures that must be affixed to containers of imported distilled spirits products or of such products brought into the United States from Puerto Rico or the Virgin Islands. The amendments remove a requirement that a part of the closure remain attached to the container when opened. This amendment will align the regulations for such products with those applicable to domestic distilled spirits products.

DATES: *Effective Date:* April 28, 2014.

FOR FURTHER INFORMATION CONTACT: Kate M. Bresnahan, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, at 202–453–1039, ext. 151.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

The Internal Revenue Code of 1986, as amended (IRC), at 26 U.S.C. chapters 51 and 52, provides for the regulation of certain alcohol- and tobacco-related businesses. In addition, the Federal Alcohol Administration Act (FAA Act), at 27 U.S.C. chapter 8, provides for the regulation of certain operations of beverage alcohol businesses. Chapters 51 and 52 of the IRC and sections 103 and 104 of the FAA Act (27 U.S.C. 203 and 204) vest the Secretary of the Treasury with authority to prescribe regulations related to the issuance of permits, registrations, and notices for such businesses. The IRC provisions also include requirements for persons operating in certain alcohol and tobacco industries to obtain bonds and to submit reports and other documents related to regulated operations. In addition, section 4222 of the IRC (26 U.S.C. 4222) establishes registration requirements for persons who make tax-free sales of firearms and ammunition.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these provisions, pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013, to the TTB Administrator to perform the functions and duties in administration and enforcement of these laws.

Electronic Submission of Forms and Use of Electronic Signatures on Forms

TTB regulations implementing the permit, registration, and notice requirements of the IRC and the FAA Act are promulgated in chapter I of title 27 of the Code of Federal Regulations (27 CFR chapter I). These regulations require certain current and prospective industry members to obtain approval before commencing a new TTB-regulated industry operation and to update permit information for an existing TTB-regulated business. These regulations also require that certain forms, reports, and other documents be submitted to TTB, depending on the operation. These documents may include operational reports, bonds, and powers of attorney, where applicable. In addition, some provisions require that the regulated industry members submit documents to other agencies. For example, provisions relating to the importation of the regulated commodities require that, in some circumstances, documents must be submitted to U.S. Customs and Border Protection (CBP) during the entry process.

The TTB regulations currently implementing those requirements generally provide for the submission to TTB of applications and other documents in paper form. Under certain conditions, forms may be submitted electronically through an electronic document receiving system. The electronic submission of forms to TTB is governed by the TTB regulations at part 73 (27 CFR part 73). Part 73 sets forth the conditions under which TTB will allow current and prospective industry members to submit forms to TTB electronically, and to use electronic signatures or digital signatures to sign those forms, in lieu of submitting paper forms with handwritten signatures. These regulations do not currently address the electronic submission of TTB-required forms and documents to other agencies.

Pursuant to the TTB regulations at 27 CFR 73.31, TTB-regulated industry members may submit an electronic form instead of a paper form to satisfy any reporting requirement in chapter I of Title 27 CFR under certain conditions. Currently, the conditions are as follows: (1) TTB has published a notice in the **Federal Register** and on its Web site (*http://www.ttb.gov*) announcing that it is prepared to receive a particular form electronically; (2) the person required to submit the form has registered to do so, pursuant to the instructions in that notice; (3) that person submits the electronic form to an electronic document receiving system that TTB has designated for the receipt of that specific form; and (4) the electronic form bears valid electronic signatures, as provided in subpart B of part 73, to the same extent that the paper form for which it substitutes would bear handwritten signatures.

Amendments to Part 73

Recently, TTB has facilitated electronic communications and transactions in many ways. For example, TTB has made a number of

electronic document receiving systems available to industry members. These secure, web-based applications include: Permits Online, which allows members of the alcohol, tobacco, and firearms and ammunition industries to submit electronically original and amended applications to operate TTB-regulated businesses and to make tax-free sales of firearms and ammunition; COLAs Online, which allows industry members to submit electronically applications for certificates of label approval for alcohol beverages; and Formulas Online, which electronically accepts applications for approval of beverage and non-beverage alcohol product formulas.

Through these systems and other Web-based means, current and prospective industry members may fill out applications and related forms online by answering a set of questions that mirror those on the hardcopy forms, by inserting the information requested into an electronic image of a form, or by uploading copies of forms and other documents. The amendments to part 73 that are made in this rulemaking are intended to facilitate all of these ways of electronically submitting forms and information to TTB.

One type of form specifically addressed by this rulemaking requires the signature of a third party (that is, a party other than (1) the applicant or regulated entity, or (2) TTB). For example, with many types of applications, TTB requires the filing of a bond. When the applicant uses a corporate surety bond to meet this requirement, the original signature of an agent or officer of the surety company may be required on the bond form. In addition, certain TTB regulations require that whenever an agent or an officer executes the bond on behalf of the surety, the bond must be supported by a signed power of attorney authorizing the agent or officer to execute the bond, prepared on the surety's own form, and with the surety company's seal affixed to the form. *See, for example,* 27 CFR 19.156, 24.150, and 40.401.

Another example of a form requiring third-party signatures is the power of attorney form, TTB F 5000.8, used by current and prospective industry members to designate the person or persons authorized to execute applications, notices, bonds, tax returns, tax information disclosure authorizations, and other instruments on behalf of the industry member, and to act for the industry member in dealing with TTB. Powers of attorney are submitted with many applications for permits or authorizations to operate regulated businesses in order to allow persons other than officers, directors, sole proprietors, partners, or members to sign or speak on behalf of the applicant businesses. *See, for example,* 27 CFR 1.30, 19.78, and 25.65. This form requires the signatures of not only a person with authority to execute the power of attorney on behalf of the industry member, but also the person designated as the industry member's attorney in fact, as well as either the signature of a notary or the signatures of two disinterested witnesses.

Because some required forms must be signed by third parties, and because these third parties are not authorized to, and do not currently have the means to, sign the forms electronically, these forms cannot, under current regulations, be executed and submitted electronically. As a result, it is not currently possible for many applicants to submit complete applications through electronic means. In such cases, applicants have submitted all other forms electronically through Permits Online and have had to mail separately paper versions of the forms requiring third-party signatures.

To streamline the application process and to enable current and prospective industry members to submit all required application forms electronically, TTB is amending § 73.31 to add two alternatives to the requirement that the form bear a valid electronic signature for every handwritten signature required on the form. The new § 73.31(b) contains three subparagraphs. The first subparagraph restates the current requirement that the form bear a valid electronic signature. The second subparagraph provides that, if the form requires a signature of a person who is not registered to submit the electronic form under § 73.31(a), or if the form requires a corporate seal, a copy of the completed form (bearing all required signatures and seals) may be submitted electronically, along with a certification or acknowledgement that the copy submitted electronically is an exact copy of the original, and that the original bears signatures of all required parties and any required corporate seal. New § 73.31(b)(2) also provides that if a copy of the completed form bearing all required signatures and seals is submitted electronically, the submitter must maintain the original completed form on the submitter's premises and make it available for inspection by TTB or submission to TTB upon request. If all of these conditions are not met for documents requiring third-party signatures or corporate seals, the submission of such forms electronically will not satisfy the requirements for submission of the forms to TTB.

A third new subparagraph, at § 73.31(b)(3), provides for the electronic submission both of copies of TTB forms that are not available in an electronic format and of documents other than TTB forms that are required to be submitted to TTB. This latter category includes, for example, a commercial document that may be submitted to satisfy a reporting requirement. In effect, this new subparagraph allows the regulated industry to submit electronically copies of a wide range of documents, as long as the copies are submitted along with a certification that the copy is an exact copy of the original, the original is maintained along with any other records required by TTB, and the original is made available or submitted to TTB upon request. This provision would allow industry members to submit a copy of an original document, for example, when required to do so by a TTB representative or by an instruction that appears in the electronic document receiving system.

TTB continues to enhance and upgrade its electronic document receiving systems to improve both functionality and the user experience. The regulatory change set forth in this rulemaking should allow users to take advantage of new functionalities related to the submission of information electronically, as those functionalities are introduced.

In addition to the changes to § 73.31 described above, TTB is removing references in §§ 73.31 and 73.35 to TTB's publishing of certain notices in the **Federal Register**. Specifically, § 73.31 currently states that certain forms will be accepted electronically upon condition that, among other things, TTB has published a notice in the **Federal Register** announcing that it is prepared to receive the particular form electronically. Section 73.35 currently provides that, if the TTB regulations require the keeping of records in paper format, TTB may authorize the keeping of electronic copies of such documents ''through a general notice in the **Federal Register** or through a variance.'' TTB is now removing both references to **Federal Register** notices to allow greater flexibility for TTB to provide for the use of electronic forms.

This final rule also adds new 27 CFR 73.40 and updates 27 CFR 73.1 to provide that documents required by TTB to be submitted to other agencies may be submitted electronically to those agencies, if the agency authorizes such submission.

Finally, TTB is making technical changes to §§ 73.30, 73.31, 73.33 and 73.34, to make it clear that the

provisions regarding electronic submission of forms cover all forms that must be submitted to TTB, not only those commonly associated with ''reporting.''

Distilled Spirits Finished Products Records

Section 5207 of the IRC (26 U.S.C. 5207) requires that distilled spirits plant (DSP) proprietors keep records in such form and manner as the Secretary of the Treasury prescribes by regulation, including records of ''* * * the kind and quantity of distilled spirits packaged or bottled * * *.'' Regulations that implement the provisions of section 5207 of the IRC as they relate to distilled spirits finished products records are set forth in part 19 of title 27 of the Code of Federal Regulations (CFR), at 27 CFR 19.601.

The Part 19 Revision

On May 8, 2008, TTB published in the **Federal Register** a notice of proposed rulemaking (Notice No. 83, 73 FR 26200), which proposed to revise the DSP regulations contained in 27 CFR part 19. In that notice, TTB stated that it intended to modernize the requirements for operating DSPs and, in effect, remove burdens and make the regulations easier to understand, allowing DSP proprietors to operate more efficiently. As part of this proposed revision, TTB proposed to amend the regulations providing for the maintenance of finished products records by adding a requirement, in new 27 CFR 19.601(a), that DSP proprietors maintain a daily summary record of the *kind* of finished products bottled or packaged within the processing account at the DSP. The recordkeeping regulations in effect at the time of the proposed rulemaking in Notice No. 83 (then at 27 CFR 19.751) required DSPs to maintain daily summary records of the quantity, but not the kind, of products bottled or packaged.

TTB had believed that this recordkeeping change proposed in Notice No. 83 merely aligned the regulatory text more closely with the statutory provision set forth at 26 U.S.C. 5207(a)(4)(B) and would assist TTB auditors during tax compliance audits, but would not result in any significant additional burden on industry members. DSP proprietors already were required under the existing regulations to maintain records of the kind of distilled spirits bottled or packaged for each lot of spirits bottled or packaged, although not in the form of a daily summary record as proposed in Notice No. 83. *See* current 27 CFR 19.599, formerly 27 CFR 19.732.

During the comment period for the regulatory changes proposed in Notice No. 83, TTB did not receive any comments addressing the addition of the new requirement to maintain a daily summary record by kind. Accordingly, this requirement was adopted as part of the final rule issued as Treasury Decision (T.D.) TTB–92, published in the **Federal Register** at 76 FR 9080, on February 16, 2011. T.D. TTB–92 became effective on April 18, 2011.

Subsequent Correspondence Regarding § 19.601

Shortly after publication of T.D. TTB–92, TTB received a letter, dated April 21, 2011, from both the Distilled Spirits Council of the United States, Inc. (DISCUS) and the Presidents' Forum of the Beverage Alcohol Industry (Presidents' Forum). DISCUS and the Presidents' Forum requested that TTB either provide an industry-wide variance from the new daily summary record by kind requirement, given the Bureau's past success in collecting distilled spirits excise taxes, or issue a formal 18-month extension for compliance with § 19.601, which would give industry time to develop data systems for the new recordkeeping requirement.

In their April 21 letter, DISCUS and the Presidents' Forum also stated that complying with the new requirement would be expensive for industry. Industry members would need to develop new data systems capable of recording the information necessary to comply. Developing these data systems could cost from $20,000 to $50,000 per industry member.

In a letter, dated June 16, 2011, TTB responded to the letter from DISCUS and the Presidents' Forum. In that letter, TTB stated:

> While TTB is not authorized to issue a waiver from the provisions of § 19.601, we understand that proprietors may need extra time to comply with the new provisions of the regulation. Accordingly, if a DSP is otherwise compliant with the TTB regulations, TTB will not take adverse action solely on the basis of the failure to have the daily summary as to kind required by § 19.601(a) until October 18, 2012.

After issuing the June 16, 2011 letter, TTB received additional information from DISCUS and the Presidents' Forum indicating that modifications of DSP recordkeeping systems would be more expensive than anticipated. TTB then decided to take regulatory action to amend § 19.601 to remove the requirement that DSPs maintain daily summary records by kind. In a second letter to DISCUS and the Presidents' Forum, dated August 28, 2012, TTB extended the deadline to comply with the provisions of § 19.601(a) regarding the daily summary records by kind for another 18 months, until April 18, 2014.

As previously stated, TTB had not believed that the change in the regulations requiring a daily summary record by the kind of distilled spirits bottled and packaged would create a significant recordkeeping burden on industry members. During past audits, TTB has been able to determine, on a case-by-case basis from source documents and records, the information that TTB had intended to be included in the daily summary record of the kind of distilled spirits bottled or packaged.

TTB Determination

Upon further consideration of this matter, TTB determined that it can continue to effectively administer the chapter 51 provisions without DSP proprietors creating a daily summary record of the kind of distilled spirits bottled and packaged. Accordingly, in this rulemaking, TTB is removing the requirement in § 19.601 that a DSP must maintain such a daily summary record.

Closures on Containers of Distilled Spirits Products Brought Into the United States From Puerto Rico or the Virgin Islands or Imported Into the United States

Section 5301(d) of the IRC (26 U.S.C. 5301(d)) addresses the closures of containers of distilled spirits. That paragraph states that the immediate container of distilled spirits withdrawn from bonded premises, or from customs custody, on determination of tax shall bear a closure or other device which is designed so as to require breaking in order to gain access to the contents of the container. This requirement does not apply to containers of bulk distilled spirits. In addition to this specific provision, section 7805 of the IRC (26 U.S.C. 7805) provides more general authority to the Secretary of the Treasury to prescribe all ''needful rules and regulations'' for the enforcement of the IRC.

Regulations that implement the statutory provisions regarding closures on distilled spirits product containers are set forth in part 19 of the TTB regulations (relating to distilled spirits products removed from domestic DSPs), part 26 (relating to distilled spirits products brought into the United States from Puerto Rico or the Virgin Islands), and part 27 (relating to distilled spirits products imported into the United States) (27 CFR parts 19, 26, and 27).

Part 19 Revision

On May 8, 2008, TTB published in the **Federal Register** a notice of proposed rulemaking (NPRM) (Notice No. 83, 73 FR 26200), which proposed to revise the DSP regulations contained in 27 CFR part 19. At the time of that NPRM, the regulations in 27 CFR part 19 required that domestic distilled spirits products having a capacity of one gallon (3.785 liters) or less must have a closure attached to the container, which must be broken in order to access the product, and that a part of the closure must remain attached to the container once it is opened. The same requirement appeared in parts 26 and 27 applicable to distilled spirits products brought into the United States from Puerto Rico or the Virgin Islands and distilled spirits products imported into the United States, respectively. As part of the revision of the part 19 regulations, TTB thoroughly reviewed the regulations with regard to the operation of DSPs in the United States and, in that context, the requirements regarding closures of distilled spirits containers. TTB explained in Notice No. 83 that it was proposing to remove from the part 19 regulations the requirement that a part of the closure remain attached to the container once opened, stating:

> In our proposed regulation at § 19.523, we require that the container have a closure that must be broken to gain access to the contents. However, we have deleted the requirement that a portion of the closure remain on the container when opened. The particular feature of the current regulation is not a requirement of the IRC at 26 U.S.C. 5301(d). Further, we have received several requests for an alternate method or procedure from this particular requirement, and we see no continued need for this feature on the closure.

TTB adopted the proposed change to the part 19 regulations in a final rule (T.D. TTB–92, 76 FR 9080) published in the **Federal Register** on February 16, 2011. T.D. TTB–92 became effective on April 18, 2011. As a result of these actions, closures on domestic distilled spirits products are not required to include a part that remains attached to the container once it is opened. However, because parts 26 and 27 were outside the scope of the rulemaking actions described above, closures on distilled spirits products brought into the United States from Puerto Rico or the Virgin Islands or imported into the United States are still required to include a part that remains attached to the container once it is opened. *See* 27 CFR 26.136, 26.231, and 27.62.

Since publishing T.D. TTB–92, TTB has received requests from Diageo Americas Supply, Inc. and from DISCUS asking TTB to take action on this issue to provide consistent treatment of all distilled spirits containers.

TTB Determination

TTB believes that the same considerations should apply to containers of imported distilled spirits or of such products brought into the United States from Puerto Rico or the Virgin Islands as apply to containers of domestic distilled spirits. As a result, TTB is amending its regulations at §§ 26.136, 26.231, and 27.62, respectively, to remove the requirements that closures on containers of distilled spirits brought into the United States from Puerto Rico or the Virgin Islands or imported into the United States include a part that remains attached to the container once opened.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Pursuant to 26 U.S.C. 7805(f), TTB submitted this final rule to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of the regulations on small businesses, and TTB received no comments from the SBA on this final rule.

Paperwork Reduction Act

This final rule imposes no new collection of information. The amendments to part 73 merely offer an additional method for submitting required forms to TTB and other agencies and will not result in a substantive or material change to any underlying information collection.

With regard to this final rule's amendment of § 19.601, when TTB had revised part 19 of the TTB regulations in T.D. TTB–92, TTB did not believe that the addition of the requirement that DSPs maintain a daily summary record as to kind would be at all burdensome to industry, as discussed above. Consequently, TTB did not make any change to the information collection associated with § 19.601 (Office of Management and Budget Control Number 1513–0041, which covers recordkeeping requirements at DSPs). Since T.D. TTB–92 became effective, TTB has not enforced the requirement to keep daily summary records for the reasons discussed above, and TTB is now removing this requirement from § 19.601. Therefore, no change to information collection number 1513–0041 is necessary as a result of this regulatory action.

Finally, amendments to 27 CFR parts 26 and 27 that remove a requirement related to the closures on containers of distilled spirits brought into the United States from Puerto Rico or the Virgin Islands or imported into the United States have the effect of reducing a regulatory burden on industry members and have no bearing on any information collection.

Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866 of September 30, 1993. Therefore, a regulatory assessment is not necessary.

Prior Notice and Comment Procedures

TTB is issuing this final rule without notice and prior opportunity for public comment in accordance with section 553(b)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(A)). This provision authorizes an agency to issue a rule without prior notice and comment when it issues rules of agency procedure. Most of the regulatory changes contained in this final rule amend the manner in which TTB will accept and process various forms required by the TTB regulations. Those changes are procedural because they impact only the method of filing applications and other documents with TTB.

Section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) also authorizes an agency to forgo notice and comment when the agency for good cause finds that those procedures are unnecessary. TTB believes prior notice and comment are unnecessary with respect to all changes contained in this final rule because we expect the affected public will benefit immediately from (1) having an additional option for document submission that facilitates an all-electronic environment as an alternative to hard-copy submission of these forms; (2) the removal of a recordkeeping requirement; and (3) the removal of a regulatory requirement related to the types of closures that must be used on certain containers of distilled spirits. Accordingly, TTB has determined that it is unnecessary to follow prior public notice and comment procedures.

For the reasons set forth above, the 5 U.S.C. 553(b) notice requirement does not apply.

Drafting Information

Kate M. Bresnahan of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Caribbean Basin initiative, Chemicals, Claims, Customs duties and inspection, Electronic filing, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic filing, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic filing, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 73

Electronic filing, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, TTB is amending 27 CFR, chapter I, parts 19, 26, 27, and 73 as follows:

PART 19—DISTILLED SPIRITS PLANTS

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

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5114, 5121–5124, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. The first sentence of § 19.601(a) is revised to read as follows:

§ 19.601 Finished products records.

(a) *Bottling and packaging.* A proprietor must maintain daily transaction records and a daily summary record of the quantity of finished products bottled or packaged within the processing account at the distilled spirits plant. * * *

* * * * *

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 3. The authority citation for part 26 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131–5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 4. Section 26.136 is revised to read as follows:

§ 26.136 Affixing closures.

Each container of distilled spirits having a capacity of one gallon (3.785 liters) or less must have a closure or other device securely affixed to the container. The closure or other device must be constructed in such a manner as to require breaking in order to gain access to the contents of the container.

■ 5. Section 26.231 is revised to read as follows:

§ 26.231 Affixing closures.

Each container of distilled spirits having a capacity of one gallon (3.785 liters) or less must have a closure or other device securely affixed to the container. The closure or other device must be constructed in such a manner as to require breaking in order to gain access to the contents of the container.

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEERS

■ 6. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

■ 7. Section 27.62 is revised to read as follows:

§ 27.62 Affixing closures.

Each container of imported distilled spirits having a capacity of one gallon (3.785 liters) or less must have a closure or other device securely affixed to the container. The closure or other device must be constructed in such a manner as to require breaking in order to gain access to the contents of the container.

PART 73—ELECTRONIC SIGNATURES; ELECTRONIC SUBMISSION OF FORMS

■ 8. The authority citation for part 73 is revised to read as follows:

Authority: 26 U.S.C. 6011(f), 6061(b), 7502(c); 44 U.S.C. 3504 Note.

§ 73.1 [Amended]

■ 9. Section 73.1, paragraph (a)(2), is amended by adding the words ''or, where applicable, to other agencies'' before the period.

■ 10. Section 73.30 is revised to read as follows:

§ 73.30 What does subpart C cover?

This subpart provides the conditions under which TTB will allow you to satisfy certain requirements to submit forms in this chapter by submitting forms electronically to TTB.

■ 11. Section 73.31 is revised to read as follows:

§ 73.31 May I submit forms electronically to TTB?

Yes; to satisfy any requirement to submit forms in this chapter (including a requirement to submit an original form or copies), you may submit an electronic form or you may submit, by electronic means, a copy of an original form, but only if:

(a) You submit the form through an electronic document receiving system that TTB has designated for the receipt of that specific form and for which you have registered if so required; and

(b) The conditions in any one of the following paragraphs apply:

(1) It is an electronic form that bears valid electronic signatures, as provided in subpart B of this part, to the same extent that the paper submission for which it substitutes would bear handwritten signatures;

(2) It is a copy of an original form that requires the signature of a third party who is not the person required to submit the form (such as a bond form or a power of attorney form) or a corporate seal; you submit the copy of the form electronically along with a certification that the copy is an exact copy of the original; the original bears all signatures of all required parties and any required corporate seal; and you maintain the original along with any other records required by TTB and make it available or submit it to TTB upon request; or

(3) It is a copy of a TTB form that is not available in an electronic format or it is a document other than a TTB form (that is, other than a document issued by TTB that bears an Office of Management and Budget control number) that is required to be submitted to TTB; you submit the copy electronically along with a certification that the copy is an exact copy of the original; and you maintain the original along with any other records required by TTB and make it available or submit it to TTB upon request.

§ 73.33 [Amended]

■ 12. Section 73.33 is amended by removing the word ''reporting'' in the first sentence.

§ 73.34 [Amended]

■ 13. Section 73.34 is amended by removing the words ''your report'' and adding in their place the words ''the document''.

§ 73.35 [Amended]

■ 14. Section 73.35 is amended by removing the words ''a general notice in the **Federal Register** or through a variance'' in the second sentence and adding in their place the words ''an approved alternate method or procedure''.

■ 15. New Subpart D is added to read as follows:

Subpart D—Electronic Filing of Documents With Other Agencies

§ 73.40 May I satisfy TTB requirements to submit forms to other agencies by submitting those forms electronically?

You may satisfy any requirement in the TTB regulations to submit a form to another agency by submitting such form to such agency by electronic means, as long as the agency provides for, and authorizes, the electronic submission of such form and you satisfy any registration or related requirement by that agency for that electronic submission. The submission of a form electronically to another agency does not alter any requirement regarding copies you must maintain.

Signed: November 20, 2013.

John J. Manfreda,

Administrator.

Approved: December 18, 2013.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade and Tariff Policy).

[FR Doc. 2014–06869 Filed 3–26–14; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2014–0144]

Drawbridge Operation Regulation; Upper Mississippi River, Rock Island, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois. The deviation is necessary to allow the Front Street 5K Run/Walk to cross the bridge. This deviation allows the bridge to be maintained in the closed-to-navigation position for one hour.

DATES: This deviation is effective from 7 p.m. to 8 p.m., June 12, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0144] is available at *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 deviation. 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 temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The U.S. Army Rock Island Arsenal requested a temporary deviation for the Rock Island Railroad and Highway Drawbridge, across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois to remain in the closed-to-navigation position for a one hour period from 7 p.m. to 8 p.m., June 12, 2014, while the Front Street 5K Run/Walk is held between the cities of Davenport, IA and Rock Island, IL.

The Rock Island Railroad and Highway Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Rock Island Railroad and Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 23.8 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 11, 2014.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2014–06840 Filed 3–26–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2014–0119]

Drawbridge Operation Regulation; Housatonic River, Stratford, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Metro-North (Devon) Bridge across the Housatonic River, mile 3.9, at Stratford, Connecticut. The deviation is necessary to facilitate structural repairs at the bridge. This temporary deviation authorizes the bridge to remain in the closed position Monday through Thursday for eight weeks to facilitate repairs at the bridge.

DATES: This deviation is effective from 6 a.m. on April 1, 2014 through 6 p.m. on May 22, 2014.

ADDRESSES: The docket for this deviation, USCG–2014–0119 is available at *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 deviation. 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 temporary deviation, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, email *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Metro-North (Devon) Bridge at mile 3.9, across Housatonic River at Stratford, Connecticut, has 19 feet of vertical clearance at mean high water and 25 feet of vertical clearance at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.207(b).

The owner of the bridge, Connecticut Department of Transportation, requested a temporary deviation from the schedule to facilitate structural repairs at the bridge.

The waterway has recreational vessels traffic of various sizes.

Under this temporary deviation the Metro-North (Devon) Bridge at mile 3.9, across the Housatonic River may remain in the closed position from 6 a.m. Monday through 6 p.m. on Thursday, from April 1, 2014 through May 22, 2014. Vessels able to pass through the bridge in the closed positions may do so at anytime. There is no alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

The Coast Guard contacted the marinas and no objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 18, 2014.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2014–06843 Filed 3–26–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapters I–VI

[Docket ID ED–2013–OII–0110]

RIN 1894–AA05

Final Priority—Promise Zones

AGENCY: Department of Education.

ACTION: Final priority.

SUMMARY: The Secretary of Education (Secretary) announces a priority that the Department of Education (Department) may use for any appropriate discretionary grant program in fiscal year (FY) 2014 and future years. Through this action, we intend to focus Federal financial assistance on expanding the number of Department programs and projects that support activities in designated Promise Zones.

This action will permit all offices in the Department to use this priority, as appropriate, in any discretionary grant competition.

DATES: This priority is effective April 28, 2014.

FOR FURTHER INFORMATION CONTACT: Jane Hodgdon. Telephone: 202–453–6620. Or by email: *Jane.Hodgdon@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Program Authority: 20 U.S.C. 1221e–3, 3474.

We published a proposed priority (NPP) in the **Federal Register** on October 25, 2013 (78 FR 63913). That notice contained background information and our reasons for proposing the priority. There are no differences between the NPP and this notice of final priority.

Public Comment: In response to our invitation in the NPP, 10 parties submitted comments on the proposed priority. Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments follows.

Comment: Several commenters addressed the Promise Zones Initiative as described in the Background Section of the NPP. Many expressed support for the Promise Zones Initiative, its potential to impact community residents, and the inclusion of a focus on education in the designated Promise Zones. Other commenters expressed concerns about the small number of Promise Zones designations to be made, about the funding and resources that would be made available to Promise Zones designees, about how the progress of the Promise Zones Initiative would be evaluated, and whether the 10-year timeframe of the designation would be sufficient to realize long-term impacts. Additionally, one commenter requested clarification on the role that Federal staff would play in working with Promise Zones designees, and two commenters suggested that the Promise Zone Initiative should expand resident access to housing opportunities in higher income communities.

Discussion: We appreciate the feedback and suggestions on the Promise Zones Initiative. The Department coordinates with the U.S. Departments of Housing and Urban Development, Agriculture, and Justice to support the administration of the Promise Zones Initiative. As such, we will share the comments regarding the broader initiative with our Federal Promise Zones partners for consideration in the development and implementation of any Promise Zones opportunity. However, because the comments about the broader initiative do not provide specific recommendations for the Department's proposed priority, we are not providing a direct response to each topic raised in these comments.

Changes: None.

Comment: Two commenters stated their support for the Promise Zones priority and the important role that education can play in revitalizing a community. While supportive of the purpose of Promise Zones, one commenter expressed concern about including a priority for a potential pool of 20 Promise Zone designees. The commenter further stated that because the scope of the Promise Zones Initiative is small, it does not make sense to prioritize those few communities.

Discussion: We appreciate the commenters' support for the President's efforts to combat poverty, and we agree that education is critical to building ladders of opportunity to the middle class. While the ultimate number of Promise Zones communities is relatively small, the number of discretionary grants that might support Promise Zones is not so limited. The priority can be used with any appropriate discretionary grant competition, and all eligible entities that are planning to serve and coordinate with a Promise Zone, such as local educational agencies and non-profit organizations, may respond to this priority. The purpose of the

Department's Promise Zone priority is to focus the Department's grant resources on communities of acute need, as indicated by their Promise Zone designation.

Furthermore, the Promise Zones Initiative provides a unique opportunity for cross-agency collaboration that will likely benefit other communities as well. For example, the participating Federal agencies will be working with the designated Promise Zones to improve coordination among Federal resources to enhance place-based strategies and increase the progress of community revitalization initiatives. As outcomes are achieved and best practices are developed, Federal agencies will apply relevant lessons learned regarding the delivery of Federal funding and services to other communities working toward similar goals. In addition, we expect that the joint investment in and evaluation of Promise Zones will result in the creation of strong, comprehensive models of community transformation that will inform the work of other communities.

Changes: None.

Comment: Two commenters expressed concern that a Promise Zones priority may result in the exclusion of other potential applicants from receiving an award. Of those commenters, one commenter's concern was specific to the TRIO Upward Bound program. Another commenter requested that the Department work with the charter school community prior to the use of the priority in the Charter Schools program, a discretionary grant program. One commenter raised a concern that layering a Promise Zone priority onto a program with a different focus might weaken the existing program.

Discussion: We recognize that Federal discretionary grant funds are highly competitive and provide critical support to communities that are working to improve student academic achievement. However, the Department's Promise Zones priority is intended to focus limited Federal resources in designated Promise Zones in order to improve the outcomes of the families, students, and children in those highly distressed locations. As stated in the NPP, the Secretary recognizes that this priority will not be appropriate for all discretionary grant programs. Each discretionary grant program is in the best position to work with its constituent communities and to determine the priorities critical to achieving their program outcomes. Additionally, when determining whether to use a priority in a given discretionary grant competition, the Department considers the intended goals of the program in order to ensure the use of any priority is appropriate to and aligned with the purpose of the discretionary program. The Promise Zones priority will not be used if it is not appropriate to the intent or purpose of a program or would somehow diminish its effect.

Changes: None.

Final Priority

To ensure that the Department's discretionary grant programs can provide, where appropriate, the increased access to additional investments for Promise Zones, the Secretary establishes a priority for projects that will serve and coordinate with a federally designated Promise Zone.

Final priority—Promise Zones.

Projects that are designed to serve and coordinate with a federally designated Promise Zone.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

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

(3) Materially alter the budgetary impacts of entitlement 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 the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or

provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected the approach that would maximize net benefits. Based on the analysis that follows, the Departments believe that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this proposed regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: Some of the programs affected by this proposed priority are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

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Dated: March 24, 2014.

Arne Duncan,

Secretary of Education.

[FR Doc. 2014–06828 Filed 3–26–14; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2013–0775; FRL–9906–73–OAR]

RIN 2060–AR92

Air Quality: Revision to the Regulatory Definition of Volatile Organic Compounds—Exclusion of 2-amino-2-methyl-1-propanol (AMP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to revise the regulatory definition of volatile organic compounds (VOCs) under the Clean Air Act (CAA). This direct final action adds 2-amino-2-methyl-1-propanol (also known as AMP; CAS number 124–68–5) to the list of compounds excluded from the regulatory definition of VOCs on the basis that this compound makes a negligible contribution to tropospheric ozone formation.

DATES: This rule is effective June 25, 2014 without further notice, unless the EPA receives adverse comment on this action by May 27, 2014. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0775, by one of the following methods:

- *Follow the on-line instructions for submitting comments: www.regulations.gov.*
- *Email: a-and-r-Docket@epamail.epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2013–0775.
- *Fax:* 202–566–9744, Attention Docket ID No. EPA–HQ–OAR–2013–0775.
- *Mail:* Docket ID No. EPA–HQ–OAR–2013–0775, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., William Jefferson Clinton, West Building Room: 3334, Mail Code: 28221T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2013–0775. 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–OAR–2013–0775. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov,* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 the 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, i.e., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket ID No. EPA–HQ–OAR–2013–0775, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., William Jefferson Clinton West Building, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Souad Benromdhane, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Mail Code C539–07, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: (919) 541–4359; fax number: (919) 541–5315; email address: *benromdhane.souad@epa.gov.*

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I. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This action revises the EPA's regulatory definition of VOCs for purposes of preparing SIPs to attain the NAAQS for ozone under title I of the CAA. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to make this revision to the regulatory definition of VOCs if adverse comments are received on the parallel proposal or this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

Entities potentially affected by this direct final rule include, but are not necessarily limited to, state and local air pollution control agencies that adopt and implement regulations to control air emissions of VOCs; and industries manufacturing and/or using pigments in water-based coatings, additives in metalworking fluids and in food contact paper, neutralizers in personal care products, and intermediates in chemical synthesis.

III. Background

A. The EPA's VOC Exemption Policy

Tropospheric ozone, commonly known as smog, is formed when VOCs and nitrogen oxides (NO_X) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, the EPA and state governments limit the amount of VOCs that can be released into the atmosphere. The VOCs are those organic compounds of carbon which form ozone through atmospheric photochemical reactions. Different VOCs have different levels of reactivity. That is, they do not react to form ozone at the same speed or do not form ozone to the same extent. Some VOCs react slowly or form less ozone; therefore, changes in their emissions have limited effects on local or regional ozone pollution episodes. It has been the EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOCs so as to focus VOCs control efforts on compounds that do significantly increase ozone concentrations. The EPA also believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs. The EPA lists compounds that it has determined to be negligibly reactive in its regulations as being excluded from the regulatory definition of VOCs. (40 CFR 51.100(s)).

The CAA requires the regulation of VOCs for various purposes. Section 302(s) of the CAA specifies that the EPA has the authority to define the meaning of ''VOC,'' and hence what compounds shall be treated as VOCs for regulatory purposes. The policy of excluding negligibly reactive compounds from the regulatory definition of VOCs was first laid out in the ''Recommended Policy on Control of Volatile Organic Compounds'' (42 FR 35314, July 8, 1977) and was supplemented subsequently with the ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans'' (70 FR 54046, September 13, 2005). The EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and therefore suitable for exemption from the regulatory definition of VOCs. Compounds that are more reactive than ethane continue to be considered VOCs for regulatory purposes and therefore are subject to control requirements. The selection of ethane as the threshold compound was based on a series of smog chamber experiments that underlay the 1977 policy.

The EPA has used three different metrics to compare the reactivity of a specific compound to that of ethane: (i) The reaction rate constant (known as k_{OH}) with the hydroxyl radical (OH); (ii) the maximum incremental reactivity (MIR) on a reactivity per unit mass basis; and (iii) the MIR expressed on a reactivity per mole basis. Differences between these three metrics are discussed below.

The k_{OH} is the reaction rate constant of the compound with the OH radical in the air. This reaction is typically the first step in a series of chemical reactions by which a compound breaks down in the air and participates in the ozone-forming process. If this step is slow, the compound will likely not form

ozone at a very fast rate. The k_{OH} values have long been used by the EPA as a metric of photochemical reactivity and ozone-forming activity, and they have been the basis for most of the EPA's previous exemptions of negligibly reactive compounds from the regulatory definition of VOCs. The k_{OH} metric is inherently a molar-based comparison, i.e., it measures the rate at which molecules react.

The MIR, both by mole and by mass, is a more recently developed metric of photochemical reactivity derived from a computer-based photochemical model. This metric considers the complete ozone forming activity of a compound on a single day, not merely the first reaction step. Further explanation of the MIR metric can be found in Carter, 1994.

The MIR values for compounds are typically expressed as grams of ozone formed per gram of VOC (mass basis), but they may also be expressed as grams of ozone formed per mole of VOC (molar basis). For comparing the reactivities of two compounds, using the molar-based MIR values considers an equal number of molecules of the two compounds. Alternatively, using the mass-based MIR values compares an equal mass of the two compounds, which will involve different numbers of molecules, depending on the relative molecular weights. The molar-based MIR comparison is consistent with the original smog chamber experiments that underlie the original selection of ethane as the threshold compound, in that these experiments compared equal molar concentrations of individual VOCs. It is also consistent with previous reactivity determinations based on k_{OH} values, which are inherently molar-based. By contrast, the mass-based MIR comparison is more consistent with how MIR values and other reactivity metrics have been applied in reactivity-based emission limits, such as the national VOC emissions standards for aerosol coatings (40 CFR part 59 subpart E). Many other VOCs regulations contain limits based upon a weight of VOC per volume of product, such as the EPA's regulations for limiting VOC emissions from architectural coatings (40 CFR part 59 subpart D). However, the fact that regulations are structured to measure VOC content by weight for ease of implementation and enforcement does not necessarily control whether VOC exemption decisions should be made on a weight basis as well.

The choice of the molar basis versus the mass basis for the ethane comparison can be significant. In some cases, a compound might be considered less reactive than ethane under the mass basis but not under the molar basis. For compounds with molecular weights higher than that of ethane, use of the mass basis results in more VOCs being classified as less reactive than ethane than use of the molar basis.

The EPA has considered the choice between a molar or mass basis for the comparison to ethane in past rulemakings and guidance. In the Interim Guidance, the EPA stated:

> [A] comparison to ethane on a mass basis strikes the right balance between a threshold that is low enough to capture compounds that significantly affect ozone concentrations and a threshold that is high enough to exempt some compounds that may usefully substitute for more highly reactive compounds.
>
> When reviewing compounds that have been suggested for VOC-exempt status, EPA will continue to compare them to ethane using k_{OH} expressed on a molar basis and MIR values expressed on a mass basis.

The EPA's 2005 Interim Guidance also noted that concerns have sometimes been raised about the potential impact of a VOC exemption on environmental endpoints other than ozone concentrations, including fine particle formation, air toxics exposures, stratospheric ozone depletion and climate change. The EPA has recognized, however, that there are existing regulatory and non-regulatory programs that are specifically designed to address these issues, and the EPA continues to believe in general that the impacts of VOC exemptions on environmental endpoints other than ozone formation will be adequately addressed by these programs. The VOC exemption policy is intended to facilitate attainment of the ozone NAAQS. As such, in general, VOC exemption decisions will continue to be based solely on consideration of a compound's contribution to ozone formation. However, if EPA determines that a particular VOC exemption is likely to result in a significant increase in the use of a compound and that the increased use would pose a significant risk to human health or the environment that would not be addressed adequately by existing programs or policies, the EPA reserves the right to exercise its judgment in deciding whether to grant an exemption.

B. Petition To List AMP as an Exempt Compound

Dow Chemical Company submitted a petition to the EPA on October 12, 2012, requesting that 2-amino-2-methyl-1-propanol (also known as AMP; CAS number 124–68–5) be exempted from the regulatory definition of VOCs based on its low reactivity relative to ethane. The petitioner indicated that AMP may be used in a variety of applications including in industries involved in the manufacture or use of pigments in water-based coatings, as an additive in metalworking fluids, in food contact paper, as a neutralizer in personal care products, and as an intermediate in chemical synthesis.

To support its petition, Dow Chemical referenced several documents, including a technical report on the maximum incremental reactivity of AMP (Carter, 2012) and two peer-reviewed journal articles on its reaction rates. According to these documents, the reactivity of AMP is 0.25 gm O_3/gm AMP in the maximum incremental reactivity (MIR) scale. The reactivity rate is slightly less than that of ethane, 0.28 gm O_3/gm ethane, the compound that the EPA has used for comparison to define ''negligible'' ozone reactivity for the purpose of exempting compounds from the regulatory definition of VOCs. The rate constant for the gas-phase reaction of OH radicals with AMP, (k_{OH}) has been measured to be 2.8×10^{-11} cm^3/molecule-sec at ~300 K (Harris and Pitts, 1983), giving it a relatively short lifetime in the atmosphere and thus reducing its ability to contribute to ozone formation. Under the conventional assumption of OH concentration of 3×10^6 molecules/cm^3, AMP would decay exponentially with a mean lifetime of about 4 hours (Carter, 2008). Based on the measured reactivity rate of AMP (Harris and Pitts, 1983), AMP has a larger k_{OH} than ethane (ethane = 2.4×10^{-13}) and therefore it is initially more reactive than ethane, but as explained in detail in Carter, 2008, AMP's first reaction primarily terminates radicals rather than cycling them and therefore generally reduces ozone. With regard to stratospheric ozone depletion, the petitioner stated that the ozone depletion potential of AMP is insignificant based on the expected possible initial reactions described in Carter 2008 and the general theory supporting the estimated mechanisms discussed in Carter 2012. Given that AMP has a relatively short atmospheric lifetime, and because it does not contain chlorine or bromine, it is not expected to contribute to the depletion of the stratospheric ozone layer.

IV. The EPA's Assessment of the Petition

The EPA is taking direct final action to approve the petition for exemption of AMP from the regulatory definition of VOCs. This action is consistent with the 2005 Interim Guidance based on comparison of the three reactivity

metric values for AMP to the corresponding values for ethane. As a short-lived substance, there is no evidence that AMP would have a substantial climate impact: AMP meets the Interim Guidance criteria for no significant risks in terms of environmental endpoints other than ozone formation. Information on these topics is given in the following sections.

A. Contribution to Tropospheric Ozone

The reaction rate of AMP for reaction with OH radical (k_{OH}) has been measured to be 2.8×10^{-11} cm^3/molecule-sec (Harris and Pitts, 1983); other reactions with ozone and nitrate radical were negligibly small. The corresponding reaction rate of ethane with OH is 2.4×10^{-13} cm^3/molecule-sec (Atkinson et al., 2006).

The overall atmospheric reactivity of AMP was studied in an experimental smog chamber, and the chemical mechanism derived from this study was used to model the complete formation of ozone for an entire single day under realistic atmospheric conditions (Carter, 2012). Using the standard 39-city array of input conditions, Carter calculated a MIR value of 0.25 g O_3/g VOC for AMP for ''averaged conditions,'' versus 0.28 g O_3/g VOC for ethane.

Table 1 presents the three reactivity metrics for AMP as they compare to ethane.

TABLE 1—REACTIVITIES OF ETHANE AND AMP

Compound	k_{OH} (cm^3/molecule-sec)	Maximum incremental reactivity (MIR) (g O_3/mole VOC)	Maximum incremental reactivity (MIR) (g O_3/g VOC)
Ethane	2.4×10^{-13}	8.4	0.28
AMP	2.8×10^{-11}	22.25	0.25

Notes:
1. k_{OH} value at 298 K for ethane is from Atkinson et al., 2006 (page 2636).
2. k_{OH} value at 300 K for AMP is from Harris and Pitts, 1983 (page 50).
3. Mass-based MIR value (g O_3/g VOC) of ethane is from Carter, 2011.
4. Mass-based MIR value (g O_3/g VOC) of AMP is from Carter, 2012.
5. Molar-based MIR (g O_3/mole VOC) values were calculated from the mass-based MIR (g O_3/g VOC) values using the number of moles per gram of the relevant organic compound.

From the data in Table 1, it can be seen that AMP has a higher k_{OH} value than ethane, meaning that it initially reacts more quickly in the atmosphere than ethane. Also, a molecule of AMP is more reactive than a molecule of ethane in terms of complete ozone forming activity as shown by the molar-based MIR (g O_3/mole VOC) values. However, the nitrogen-centered radical in AMP scavenges radicals, primarily NO_X and is expected to form nitramine that is assumed to be inert according to Harris and Pitts, 1983. This is in line with the effects of AMP addition on ozone concentration reduction observed in the chamber experiments of Carter, 2008. The early reactivity of AMP is thus short lived, because the reaction pathway is terminated by the intermediate production of assumed inert nitramine. Unlike other VOCs, AMP is a base and might be lost to some degree by reaction with HNO_3, forming non-volatile amine salts, reducing its availability in the gas phase for O_3 formation. As a result, one gram of AMP has a lower MIR value than one gram of ethane. Thus, under the 2005 Interim Guidance AMP is eligible to be exempted from the regulatory definition of VOCs, on the basis of the mass-based MIR.

B. Likelihood of Risk to Human Health or the Environment

Information in Dow Chemical Company's petition and its appendices as well as the reference material indicates that AMP has low toxicity (Griffin 1990), no irritation or skin sensitization, and no detectable genotoxic activity in vitro or in vivo. AMP was subject to the Ames test, the mouse lymphoma assay and the mouse micronucleus test (Gudi, 1998; San and Clark, 1997; and Wagner 1996) and was found negative in these studies among several others. AMP has a toxicity profile amply documented in the appendices provided with the petition material and placed in the docket for this rulemaking. AMP also has a favorable toxicity profile supported by the Hazard Characterization Document dedicated to AMP published by EPA in March of 2012, titled ''Screening-level Hazard Characterization of High Production Volume Chemicals—2-Amino-2-methyl-1-propanol (AMP) CASRN 124–68–5'' under the High Production Volume (HPV) Challenge Program.[1]

In addition, AMP is a reasonably strong base and forms salts with acids. Therefore, in many formulations very little AMP will evaporate and will be available for atmospheric reaction due to its ionic or salt form. Therefore, exposure is low due to low volatility at room temperature. However, repeated inhalation of vapor or mist could cause respiratory irritation. Burnett et al. (2009) reviewed safety data and found that AMP is safe to use in cosmetics after he performed several acute inhalation studies with AMP as well as with AMP in alcohol and propellant. The studies indicated that AMP is nontoxic by inhalation. The studies also tested other routes of exposure and found them to be nontoxic as well.

AMP is not regulated as a hazardous air pollutant (HAP) under title I of the Clean Air Act. Also, it is not listed as a toxic chemical under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

The Toxic Substances Control Act (TSCA) requires the EPA to assess and prevent any unreasonable risks to human health and the environment before a new chemical substance is introduced into commerce. Section 5 of TSCA requires manufacturers and importers to notify the EPA before manufacturing or importing a new chemical substance. This premanufacture notice, or PMN, must be submitted at least 90 days prior to the manufacture (including import) of the chemical. Under the TSCA New Chemicals Program, the EPA then performs a risk assessment on the new chemical substance to determine whether an unreasonable risk may, or will, be presented by the expected manufacture, processing, distribution in commerce, use, and disposal of the new

[1] U.S. EPA. High Production Volume (HPV) Challenge Program; *http://www.epa.gov/chemrtk/hpvis/hazchar/124685_AMP_March_2012.pdf.*

substance. AMP is TSCA compliant, but is not a new compound and did not undergo PMN review.

The Significant New Alternatives Policy (SNAP) program is the EPA's program to evaluate and regulate substitutes for ozone-depleting chemicals. In Section 612(c) of the CAA, the agency is authorized to identify and publish lists of acceptable and unacceptable substitutes for class I or class II ozone-depleting substances. AMP is not a substitute for any of the ozone-depleting chemicals, and it has not been evaluated under the SNAP program. For the reasons stated in section III, AMP does not contribute to the depletion of the stratospheric ozone layer.

C. Climate Impacts

The EPA has previously exempted compounds with modest climate impacts from the regulatory definition of VOCs. Because AMP has a relatively short atmospheric lifetime (i.e., about 4 hours under the conventional assumption of a hydroxyl radical concentration of 3×10^6 molecules/cm^3), its direct contribution to global warming should be insignificant and thus any indirect contributions to global warming through interactions with ozone and methane chemistry should be of the order of or smaller than that of ethane (in addition to any conversion of carbon in AMP to carbon dioxide).

D. Conclusion

In summary, the EPA finds that AMP is negligibly reactive with respect to its contribution to tropospheric ozone formation and thus may be exempted from EPA's definition of VOCs in 40 CFR section 51.100(s). We consider risks not related to tropospheric ozone associated with currently allowed uses of the chemical to be acceptable. AMP has not been the subject of any SNAP review. AMP's performance as a multifunctional neutralizer combined with its reduced ozone potential and favorable toxicity data makes this product a preferred one compared to more toxic chemicals used for the same purpose. In addition, there is no evidence that climate effects or other environmental impacts resulting from AMP emissions should disqualify AMP for exemption from the regulatory definition of VOCs based on the 2005 Interim Guidance criteria.

V. Direct Final Action

The EPA is responding to the petition by revising its regulatory definition of VOCs at 40 CFR 51.100(s) to add AMP to the list of compounds that are exempt from the regulatory definition of VOCs because they are negligibly reactive, on the basis that it is less reactive than ethane on a mass MIR basis. If an entity uses or produces any of this compound and is subject to EPA regulations limiting the use of VOC in a product, limiting the VOC emissions from a facility, or otherwise controlling the use of VOC for purposes related to attaining the ozone NAAQS, then this compound will not be counted as a VOC in determining whether these regulatory obligations have been met. This action may also affect whether this compound is considered a VOC for state regulatory purposes to reduce ozone formation if a state relies on the EPA's regulatory definition of VOCs. States are not obligated to exclude from control as a VOC those compounds that the EPA has found to be negligibly reactive. However, no state may take credit for controlling this compound in its ozone control strategy. For example, reduction in emissions for this compound will not be considered or counted in determining whether states have met rate of progress requirement for VOCs in SIPs for purpose of meeting the ozone NAAQS.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). It does not contain any recordkeeping or reporting requirement.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 proposed 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 notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.); (2) A governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (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 direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This direct final rule removes AMP from the regulatory definition of VOCs and thereby relieves users of the compound from requirements to control emissions of the compound. We have therefore concluded that this direct final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This direct final rule removes AMP from the regulatory definition of VOCs and thereby relieves users of the compound from requirements to control emissions of the compound.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule removes AMP from the regulatory definition of VOCs and thereby relieves users of the compound from requirements to control emissions of the compound. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. This direct final rule removes AMP from the regulatory definition of VOCs and thereby relieves users from requirements to control emissions of the compound. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. While this direct final rule is not subject to the Executive Order, the EPA has reason to believe that at higher concentrations ozone has a disproportionate effect on active children who play outdoors (62 FR 38856; 38859, July 18, 1997). The EPA has not identified any specific studies on whether or to what extent AMP may affect children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, ''(66 FR 28355, May 22, 2001) because it is not a ''significant energy action'' under EO 12866.

I. 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 the EPA to use voluntary consensus standards in its 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 the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, the EPA has not considered the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it will not affect the level of protection provided to human health or the environment. This direct final rule removes AMP from the regulatory definition of VOCs and thereby relieves users of the compound from requirements to control emissions of the compound.

K. 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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on June 25, 2014.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date the final action is published in the **Federal Register**. Filing a petition for review by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such action. Thus, any petitions for review of this action related to the exemption of AMP from the regulatory definition of VOCs must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

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List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 21, 2014.

Gina McCarthy,

Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Subpart F—Procedural Requirements

■ 1. The authority citation for Part 51, Subpart F, continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

§ 51.100—[Amended]

■ 2. Section 51.100, paragraph (s)(1) introductory text, is amended by removing the words ''and perfluorocarbon compounds which fall into these classes:'' and adding in their place the words ''2-amino-2-methyl-1-propanol; and perfluorocarbon compounds which fall into these classes:''.

[FR Doc. 2014–06790 Filed 3–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0211; FRL–9908–46–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The Commonwealth of Virginia has made a submittal addressing the infrastructure requirements for the 2008 ozone NAAQS.

DATES: This final rule is effective on April 28, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2013–0211. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On July 2, 2013 (78 FR 39671), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia proposing approval of Virginia's July 23, 2012 submittal to satisfy several requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS. In the NPR, EPA proposed approval of the following infrastructure elements: Sections 110(a)(2)(A), (B), (C) (for enforcement and regulation of minor sources and minor modifications), (D)(i)(II) (for visibility protection), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (relating to consultation, public notification, and visibility protection requirements), (K), (L), and (M), or portions thereof. EPA is taking separate action on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to Virginia's prevention of significant deterioration (PSD) program and on section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). Virginia did not submit section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the three year submission deadline of section 110(a)(1), and will be addressed in a separate process. Virginia also did not include a component to address section 110(a)(2)(D)(i)(I) as it is not required in accordance with the *EME Homer City* decision from the United States Court of Appeals for the District of Columbia Circuit, until EPA has defined a state's contribution to nonattainment or interference with maintenance in another state. *See EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), *cert. granted,* 133 U.S. 2857 (2013). Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, states such as Virginia are not required to submit section 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their obligations under that section. Therefore, EPA is not acting on 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2013–0211.

II. Public Comments and EPA's Responses

EPA received three sets of comments on the July 2, 2013 proposed rulemaking action of Virginia's 2008 ozone ''infrastructure'' SIP. The commenters include the State of Connecticut, the State of Maryland, and the Sierra Club. A full set of these comments is provided in the docket for today's final rulemaking action. As both States and Sierra Club made a comment regarding the same subject matter of transport and the States did not make any additional comments, a summary of the three comments dealing with transport and EPA's response to all three will be addressed first followed by a summary and responses to the remainder of Sierra Club's comments.

A. ''Interstate Transport'' Comments

Comment: The State of Connecticut and the State of Maryland as well as the Sierra Club each assert that the ability of downwind states to attain the 2008 ozone NAAQS is substantially compromised by interstate transport of pollution from upwind states. The States assert that they have done their share to reduce in-state emissions, and EPA should ensure each upwind state addresses contribution to another downwind state's nonattainment. They state that CAA section 110(a)(1) requires states like Virginia to submit, within three years of promulgation of a new NAAQS, a plan which provides for implementation, maintenance, and enforcement of such NAAQS within the state. They also argue that, under section 110(a)(2), Virginia was required to submit a complete SIP that demonstrated compliance with the good neighbor provision of section 110(a)(2)(D)(i)(I). Connecticut argues that pursuant to section 110(k) EPA ''must make a finding that Virginia has failed to submit the required SIP elements'' and that such a finding creates a two-year deadline for EPA to promulgate a Federal Implementation Plan (FIP). Maryland argues that ''[p]ursuant to the CAA section 110(k), the EPA must disapprove the section 110(a)(2)(D)(i)(I) SIP portion that Virginia has failed to submit.''

Both States further argue that the CAA does not give EPA discretion to approve a SIP without the good neighbor provision on the grounds that EPA would take separate action on Virginia's obligations under section 110(a)(2)(D)(i)(I). They assert that the only action available to EPA is promulgation of a FIP under section 110(c)(1) within two years. Connecticut asserts that the CAA ''gives EPA no discretion to approve a SIP without the good neighbor provision on the grounds that it intends to address Virginia's section 110(a)(2)(D)(i)(I) obligations in a separate action.'' Maryland further adds that if EPA believes that the *EME Homer City* decision prohibits EPA from disapproving the SIP before quantifying Virginia's significant contribution level, EPA should immediately promulgate Virginia's significant contribution level.

Similarly, Sierra Club argues that EPA cannot approve Virginia's Infrastructure SIP because it does not include provisions to address section 110(a)(2)(D)(i)(I), and that EPA cannot use *Homer City* ''as an excuse to ignore its obligations under Clean Air Act 110(a)(2)(D)(i)(I).'' Sierra Club argues the relevant portion of *Homer City* is dicta and that as this rulemaking would be appealed to the Fourth Circuit, not the D.C. Circuit; EPA is under no obligation to follow the D.C. Circuit *EME Homer City* decision in this rulemaking. Sierra Club concludes that EPA must find that Virginia has failed to submit a section 110(a)(2)(D)(i)(I) SIP and that EPA must issue a FIP ''within two years of its disapproval.''

Response: In this rulemaking EPA is not taking any final action with respect to the provisions in section 110(a)(2)(D)(i)(I)—the portion of the good neighbor provision which addresses emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. The Commonwealth of Virginia did not make a SIP submission to address the requirements of section 110(a)(2)(D)(i)(I) and thus there is no such submission upon which EPA could take action under section 110(k). EPA did not propose to take any action with respect to Virginia's obligations pursuant to section 110(a)(2)(D)(i)(I) and is not, in this rulemaking action, taking any such action. Further, EPA could not, as Maryland urges, act under section 110(k) to disapprove a SIP that has not been submitted to EPA. EPA also is not taking any final action with respect to findings of failure to submit for the 2008 ozone NAAQS in this notice. On January 15, 2013, EPA published findings of failure to submit with respect to the infrastructure SIP requirements for the 2008 ozone NAAQS. *See* 78 FR 2882. In that action, EPA explained why it was not issuing any findings of failure to submit with respect to section 110(a)(2)(D)(i)(I). *Id.* at 2884–85. In that action, EPA explained the opinion of the U.S. Court of Appeals for the D.C. Circuit in *EME Homer City Generation* v. *EPA,* 696 F.3d 7, 31 (D.C. Cir. 2012), *cert. granted* 133 U.S. 2857 (2013), ''concluded that SIP cannot be deemed to lack a required submission or deemed deficient for failure to meet the 110(a)(2)(D)(i)(I) obligation until after EPA quantifies the obligation.'' *See* 78 FR at 2884–85; *see also EME Homer City,* 696 F.3d at 32. Therefore, under the D.C. Circuit decision *EME Homer City,* states like Virginia have no obligation to make a SIP submission to address section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS until EPA has first defined the state's obligations. EPA could not, at this time, find that Virginia has failed to submit a required SIP element and as such, EPA has no obligation to make a finding of failure to submit under section 110(c)(1)(A).

EPA further disagrees with the commenters' suggestions that the Agency need not follow the D.C. Circuit opinion in *EME Homer City.* While the Supreme Court has agreed to review the *EME Homer City* decision during the Court's 2013–14 term, at this time, the D.C. Circuit's decision remains in place. EPA intends to act in accordance with the D.C. Circuit opinion in *EME Homer City* unless it is reversed or otherwise modified by the Supreme Court.

Further, because the EPA rule known as the Cross State Air Pollution Rule (CSAPR) reviewed by the court in *EME Homer City* was designated by EPA as a ''nationally applicable'' rule within the meaning of CAA 307(b)(1), all petitions for review of CSAPR were required to be filed in the D.C. Circuit. EPA accordingly believes the D.C. Circuit's decision in *EME Homer City* is also nationally applicable. As such, EPA does not intend to take any actions, even if they are only reviewable in another federal Circuit Court of Appeals, that are inconsistent with the decision of the D.C. Circuit in *EME Homer City.* EPA also finds no basis for one commenter's suggestion that the relevant portion of the D.C. Circuit opinion in *EME Homer City* opinion is dicta.

EPA also disagrees with the commenters' argument that EPA cannot approve a SIP without the good neighbor provision. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve the

states' SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. *See* S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)).

As such, the Agency interprets its authority under section 110(k)(3), as affording EPA the discretion to approve or conditionally approve individual elements of Virginia's infrastructure submission for the 2008 8-hour ozone NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) with respect to that NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual severable measures in a plan submission. In short, EPA believes that even if the SIP submission for section 110(a)(2)(D)(i)(I) were now relevant, which it is not, it would still have discretion under section 110(k) to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate. The commenters raise no compelling legal or environmental rationale for an alternate interpretation.

There is also no basis for the contention that EPA must issue a FIP within two years, as EPA has neither disapproved, nor found that Virginia failed to submit a required 110(a)(2)(D)(i)(I) SIP submission. Moreover, the D.C. Circuit clearly held in *EME Homer City* that even where EPA had issued findings of failure to submit 110(a)(2)(D)(i)(I) SIPs and/or disapproved such SIPs, EPA lacked authority to promulgate FIPs under 110(c)(1) where it had not previously quantified states' good neighbor obligations. *EME Homer City,* 696 F.3d at 31–37. And, as explained in this response to comment, EPA intends to comply with that decision unless it is reversed or otherwise modified by the Supreme Court. *See also* 78 FR 14683 (concluding that, under the D.C. Circuit opinion in *EME Homer City,* disapproval of a 110(a)(2)(D)(i)(I) SIP submitted by Kentucky did not start a FIP clock).

EPA notes, however, that it is working with state partners to assess next steps to address air pollution that crosses state boundaries and has begun work on a rulemaking to address transported air pollution affecting the eastern half of the United States. This rulemaking action is technically complex and must comply with the rulemaking requirements of CAA section 307(d).

In addition, EPA notes that Connecticut appears to have misread EPA's proposal. EPA did not, in the NPR, state as Connecticut appears to assume that it was approving the SIP without the good neighbor provision ''on the grounds that it intends to address Virginia's section 110(a)(2)(D)(i)(I) obligations in a separate action.'' In the NPR which proposed approval of portions of Virginia's infrastructure SIP for the 2008 ozone NAAQS, EPA stated that its proposed action did not include any proposed action on section 110(a)(2)(D)(i)(I) for Virginia's July 23, 2012 infrastructure SIP submission for the 2008 ozone NAAQS because this element was not required until EPA quantified the State's obligations pursuant to the *EME Homer City* opinion. *See* 78 FR 39651, 39652, (July 2, 2013). As discussed in this response to comment, EPA therefore has no obligation to find Virginia failed to satisfy its good neighbor obligations and no action is required at this time. EPA's approval of the Virginia July 23, 2012 infrastructure SIP submission for the 2008 ozone NAAQS for the portions described in the NPR was therefore appropriate.

B. Sierra Club Comments

Sierra Club made several additional comments which are provided in the docket for today's final rulemaking action and summarized below with EPA's response to each.

Comment 1: Sierra Club contends that EPA cannot approve the section 110(a)(2)(A) portion of Virginia's 2008 ozone infrastructure SIP revision because the plain language of 110(a)(2)(A) of the CAA, legislative history of the CAA, case law, EPA regulations such as 40 CFR 51.112(a), and EPA interpretations in rulemakings, require the inclusion of enforceable emission limits in an infrastructure SIP to prevent NAAQS violations in areas not designated nonattainment. Specifically, Sierra Club cites air monitoring reports for Charles County indicating violations of the NAAQS based on 2009–2011 and 2010–2012 design values and air quality monitoring reports for Chesterfield, Hanover, Henrico, and Stafford Counties and Hampton City indicating violations based on data from 2010–2012. The commenter alleges that these violations demonstrate that the infrastructure SIP fails to ensure that air pollution levels meet or are below the level of the NAAQS and thus the infrastructure SIP must be disapproved. Sierra Club notes that the violation of the NAAQS in Charles County based on data from 2009–2011 was known two months before Virginia submitted its ozone infrastructure SIP in July 2012 and that the data indicating violations based on data through 2012 was available in January 2013, but that Virginia failed to address the violations by enacting enforceable limits.

Furthermore, Sierra Club contends that the SIP must be disapproved because it does not include additional enforceable emission limits to address the NAAQS exceedances. Sierra Club contends that emission reductions from measures taken to meet the one-hour and 1997 8-hour ozone NAAQS, do not ensure attainment and maintenance of the 2008 ozone NAAQS. Sierra Club states that Virginia's SIP provisions which addressed the 1-hour and 1997 8-hour ozone NAAQS do not ensure Virginia will meet the stricter 2008 8-hour ozone NAAQS, especially as counties not designated nonattainment are exceeding the 2008 8-hour ozone NAAQS. The commenter also suggests that Virginia adopt specific controls that they contend are cost effective for reducing nitrogen oxides (NO_X), a precursor to ozone.

Response 1: EPA disagrees with the commenter that the statute is clear on its face that infrastructure SIPs must include detailed attainment and maintenance plans for all areas of the state and must be disapproved if air quality data that became available late in the process or after the SIP was due and submitted changes the status of areas within the state. The commenter's specific arguments that the statutory language, legislative history, case law, EPA regulations, and prior rulemaking actions by EPA mandate the narrow interpretation they advocate are addressed in subsections (1) through (5) of this rulemaking action. EPA believes that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS.

As an initial matter, EPA disagrees that air quality monitoring that became available four years following promulgation of the 2008 ozone NAAQS and only shortly before the SIP was submitted for one area (Charles County for 2009–2011) and after submission for

six counties (Chesterfield, Hanover, Henrico, Stafford, Hampton City, and Charles for 2010–2012) provides a basis for disapproving the Virginia ozone infrastructure SIP. States must develop SIPs based on the information they have during the SIP development process and data that becomes available near the end of that process or after that process is completed cannot undermine the reasonable assumptions that were made by the state based on the information it had available as it developed the plan. Thus, the data cited by the commenter should not be considered in determining whether the SIP should be approved. The suggestion that Virginia's ozone infrastructure SIP must include measures addressing violations of the standard that did not occur until shortly before or even after the SIP was due and submitted cannot be supported. The CAA provides states with three years to develop infrastructure SIPs and states cannot reasonably be expected to address the annual change in an area's design value for each year over that period, nor to predict the air quality data in periods after development and submission of the SIPs. Moreover, the CAA recognizes and has provisions to address changes in air quality over time, such as an area slipping from attainment to nonattainment or changing from nonattainment to attainment. These include provisions providing for redesignation in section 107(d) and provisions in section 110(k)(5) allowing EPA to call on the state to revise its SIP, as appropriate.

The commenter suggests that EPA must disapprove the Virginia ozone infrastructure SIP because the fact that areas in Virginia now have air quality data slightly above the standard proves that the infrastructure SIP is inadequate to demonstrate maintenance for those six areas. EPA disagrees with the commenter because EPA does not believe that section 110(a)(2)(A) requires detailed planning SIPs demonstrating either attainment or maintenance for specific geographic areas of the state. The infrastructure SIP is triggered by promulgation of the NAAQS, not designation. Moreover, infrastructure SIPs are due three years following promulgation of the NAAQS and designations are not due until two years (or in some cases three years) following promulgation of the NAAQS. Thus, during a significant portion of the period that a state has available for developing the infrastructure SIP, it does not know what the designation will be for individual areas of the state.[1] In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.

EPA's interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in ''air quality control regions'' (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with the NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].'' In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (i.e., were nonattainment) or were meeting the NAAQS (i.e., were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause ''as may be necessary to insure attainment and maintenance [of the NAAQS]'' with ''as may be necessary or appropriate to meet the applicable requirements of this chapter.'' Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. And, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

For all of these reasons, EPA disagrees with the commenter that EPA must disapprove an infrastructure SIP revision if there are monitored violations of the standard in the state and the section 110(a)(2)(A) revision does not have detailed plans for demonstrating how the state will bring that area into attainment. Rather, EPA believes that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the submittal.

Moreover, as addressed in EPA's proposed approval for this rule, Virginia submitted a list of existing emission reduction measures in the SIP that control emissions of volatile organic compounds (VOCs) and NO_X. Virginia's SIP revision reflects several provisions that have the ability to reduce ground level ozone and its precursors. The Virginia SIP relies on measures and programs used to implement previous ozone NAAQS. Because there is no substantive difference between the previous ozone NAAQS and the more recent ozone NAAQS, other than the level of the standard, the provisions relied on by Virginia will provide benefits for the new NAAQS; in other words, the measures reduce overall ground-level ozone and its precursors and are not limited to reducing ozone levels to meet one specific NAAQS.

EPA shares the commenter's concern regarding areas that are monitoring exceedances of the 2008 8-hour ozone NAAQS and will work appropriately with state and local agencies to address such exceedances. Further, in approving Virginia's infrastructure SIP revision, EPA is affirming that Virginia has sufficient authority to take the types of

[1] While it is true that there may be some monitors within a state with values so high as to make a nonattainment designation of the county with that monitor almost a certainty, the geographic boundaries of the nonattainment area associated with that monitor would not be known until EPA issues final designations. Moreover, the six areas of concern to the commenter do not fit that description in any event.

actions required by the CAA in order to bring such areas back into attainment.

1. The Plain Language of the CAA

Comment 2: The commenter states that on its face the CAA ''requires I–SIPs to be adequate to prevent violations of the NAAQS.'' In support, the commenter quotes the language in section 110(a)(1) which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which commenters claimed include the maintenance plan requirement. Sierra Club notes the CAA definition of emission limit and reads these provisions together to require ''enforceable emission limits on source emissions sufficient to ensure maintenance of the NAAQS.''

Response 2: EPA disagrees that section 110 is ''clear on its face'' and must be interpreted in the manner suggested by Sierra Club. As explained earlier in this rulemaking action, section 110 is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA interprets the requirement in section 110(a)(2)(A) that the plan provide for ''implementation, maintenance and enforcement'' to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean for purposes of section 110, that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. As EPA stated in ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' dated September 13, 2013 (Infrastructure SIP Guidance), ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both. Overall, the infrastructure SIP submission process provides an opportunity . . . to review the basic structural requirements of the air agency's air quality management program in light of each new or revised NAAQS.'' Infrastructure SIP Guidance at p. 2.

The commenter makes general allegations that the six counties of concern do not have any protective measures addressing ozone pollution. EPA addressed the adequacy of Virginia's infrastructure SIP for 110(a)(2)(A) purposes to meet applicable requirements of the CAA in the TSD accompanying the July 2, 2013 NPR and explained why the SIP includes enforceable emission limitations and other control measures necessary for maintenance of the 2008 ozone NAAQS throughout the state. For the six counties at issue, these include Virginia's enforceable emission limitations and other control measures at 9 VAC 5 Chapter 40 (Existing Stationary Sources), 9 VAC 5 Chapter 50 (New and Modified Stationary Sources), 9 VAC 5 Chapter 91 (Motor Vehicle Inspection and Maintenance in Northern Virginia), 9 VAC 5 Chapter 130 (Open Burning), and 9 VAC 5 Chapter 140 (Emissions Trading).

As discussed in the TSD accompanying the July 2, 2013 NPR, Virginia has also submitted maintenance plans, reasonable further action plans, and attainment demonstrations for the 1991 1-hour and the 1997 8-hour ozone NAAQS. Included in these plans and demonstrations are enforceable emissions limits, control measures, fees, and compliance schedules. These plans and demonstrations were prepared for the following areas: Hampton Roads, Richmond-Petersburg, Fredericksburg, Shenandoah National Park, and the Washington DC–MD–VA area. Virginia also submitted early action compact plans for the Winchester and Roanoke 1997 ozone NAAQS early action compact areas. The approved plans are listed in 40 CFR 52.2420(e).

2. The Legislative History of the CAA

Comment 3: Sierra Club cites two excerpts from the legislative history of the CAA Amendments of 1970 claiming they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of Virginia. Sierra Club also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 3: As provided in the previous response, the CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. In any event, the two excerpts of legislative history the commenter cites merely provide that states should include enforceable emission limits in their SIPs and they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP. As provided earlier in this rulemaking action, the TSD for the proposed rule explains why the SIP includes enforceable emissions limitations for the relevant areas.

3. Case Law

Comment 4: Sierra Club also discusses several cases applying the CAA which Sierra Club claims support their contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS. Sierra Club first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meet the national standards.'' Sierra Club also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS and *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also stated that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''The

Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Hall* v. *EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) (''Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State''). Finally, the commenter cites *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 4: None of the cases the commenter cites support the commenter's contention that section 110(a)(2)(A) is clear that infrastructure SIPs must include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train,* none of the cases the commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, in the context of a challenge to an EPA action, revisions to a SIP that was required and approved as meeting other provisions of the CAA or in the context of an enforcement action, the court references section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background section of its decision.

In *Train,* 421 U.S. 60, a case that was decided almost 40 years ago, the Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation'' not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). The commenters do not raise any concerns about whether the measures relied on by the state in the infrastructure SIP are ''emissions limitations'' and the decision in this case has no bearing here.[2] In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the court was reviewing a federal implementation plan that EPA promulgated after a long history of the state failing to submit an adequate state implementation plan. The court cited generally to section 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations but this language was not part of the court's holding in the case. The commenter suggests that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the court makes no mention of the changed language. Furthermore, the commenter also quotes the court's statement that ''SIPs must include certain measures Congress specified'' but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's ''new source'' permitting program, not its infrastructure SIP.

Two of the cases the commenter cites, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret CAA section 110(l), the provision governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

4. EPA Regulations, Such as 40 CFR 51.112(a)

Comment 5: The commenter cites to 40 CFR 51.112(a), providing that ''[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].'' The commenter asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The commenter states that ''[a]lthough these regulations were developed before the Clean Air Act separated infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I–SIPs.'' The commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that ''[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act. . . .'' 51 FR 40656, 40656 (November 7, 1986).

Response 5: The commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits ''adequate to prohibit NAAQS violations'' and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the commenter recognizes this regulatory provision was initially

[2] While the commenters do contend that the State shouldn't be allowed to rely on emission reductions that were developed for the prior ozone standards (which we address above), they do not claim that any of the measures are not ''emissions limitations'' within the definition of the CAA.

promulgated and ''restructured and consolidated'' prior to the CAA Amendments of 1990, in which Congress removed all references to ''attainment'' in section 110(a)(2)(A). And, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing ''control strategy'' SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as section 175A and 182. The commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were ''beyond the scope'' of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather was meant merely to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. *Id.* at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''part D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_x and PM (portion)''), 51.14 (''Control strategy: CO, HC, O_X and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). *Id.* at 40660. Thus, the present-day 51.112 contains consolidated provisions that are focused on control strategy SIPs and the infrastructure SIP is not such a plan.

5. EPA Interpretations in Other Rulemakings

Comment 6: The commenter also references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs and claimed they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs. The commenter first points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the sulfur dioxide (SO_2) NAAQS. In that action, EPA cited section 110(a)(2)(A) as a basis for disapproving a revision to the State plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, Sierra Club cites a 2013 proposed disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the State. EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the State had not demonstrated that the emission limit was ''redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions.'' EPA further stated in that proposed disapproval that the State had not demonstrated that removal of the limit would not ''affect the validity of the emission rates used in the existing attainment demonstration.''

Response 6: EPA does not agree that the two prior actions referenced by the commenter establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rule and the proposed Indiana rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP in 71 FR 12623 addressed a control strategy SIP and not an infrastructure SIP. The Indiana action provides even less support for the commenter's position. As an initial matter, the Indiana action is a proposal and thus cannot be presumed to reflect the Agency's final position. In any event, the review in that rule was of a completely different requirement than the 110(a)(2)(A) SIP. Rather, in that case, the State had an approved SO_2 attainment plan and was seeking to remove from the SIP provisions relied on as part of the modeled attainment demonstration. EPA proposed that the State had failed to demonstrate under section 110(l) of the CAA why the SIP revision would not result in increased SO_2 emissions and thus interfere with attainment of the NAAQS. Nothing in that rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved attainment plan will not interfere with attainment of the NAAQS.

Comment 7: Sierra Club contends that EPA should disapprove Virginia's 2008 8-hour ozone infrastructure SIP revision with regard to the visibility component of 110(a)(2)(D)(i)(II) and (a)(2)(J) until such time that Virginia imposes best available retrofit technology (BART) for NOx and SO_2 for EGUs. The commenter asserts that the substitution of the Clean Air Interstate Rule (CAIR) for BART for EGUs violates the CAA including section 169A. The commenter asserts that CAIR is not permanent and enforceable and references litigation in the D.C. Circuit related to CAIR. *See North Carolina* v. *EPA,* 531 F.3d 896, *on rehearing,* 550 F.3d 1176 (D.C. Cir. 2008). The commenter refers to CAIR as ''vacated'' and therefore not able to be considered permanent and enforceable. The commenter includes comments challenging EPA's prior rulemakings that CAIR and CSAPR were ''better than BART'' and states that EPA could not rely on CAIR to support its proposed approval of the visibility components of Virginia's 2008 8-hour ozone infrastructure revision. The commenter also cites several rulemakings and proposed rulemakings on attainment plan SIPs, redesignation requests, and regional haze SIPs in which EPA had stated it could not fully approve SIP revisions that relied on CAIR reductions or had stated CAIR reductions could be permanent and enforceable only in tandem with CSAPR reductions.

Response 7: EPA disagrees with the commenter regarding the approvability of Virginia's SIP for section 110(a)(2)(D)(i)(II) and (a)(2)(J). As explained in detail in EPA's NPR related to today's rulemaking action and in the TSD, EPA believes that in light of the D.C. Circuit's decision to vacate CSAPR, also known as the Transport Rule (*see EME Homer City,* 696 F.3d 7), and the court's order for EPA to ''continue administering CAIR pending the promulgation of a valid replacement,'' it is appropriate for EPA to rely at this time on CAIR to support approval of Virginia's 2008 8-hour ozone infrastructure revision as it relates to visibility. EPA has been ordered by the D.C. Circuit to develop a new rule, and to continue implementing CAIR in the meantime. Unless the Supreme Court reverses or otherwise modifies the D.C. Circuit's decision on CSAPR in *EME Homer City,* EPA does not intend to act in a manner inconsistent with the decision of the D.C. Circuit. Based on the current direction from the court to continue administering CAIR, EPA

believes that it is appropriate to rely on CAIR emission reductions for purposes of assessing the adequacy of Virginia's infrastructure SIP revision with respect to prong 4 of section 110(a)(2)(D)(i)(II) while a valid replacement rule is developed and until submissions complying with any such new rule are submitted by the states and acted upon by EPA or until the *EME Homer City* case is resolved in a way that provides different direction regarding CAIR and CSAPR.

Furthermore, as neither the Commonwealth nor EPA has taken any action to remove CAIR from the Virginia SIP, CAIR remains part of the federally-approved SIP and can be considered in determining whether the SIP as a whole meets the requirement of prong 4 of 110(a)(2)(D)(i)(II). EPA is taking final action to approve the infrastructure SIP submission with respect to prong 4 because Virginia's regional haze SIP, which EPA has approved, in combination with its SIP provisions to implement CAIR adequately prevents sources in Virginia from interfering with measures adopted by other states to protect visibility during the first planning period.[3]

EPA disagrees with the commenter that the CAA does not allow states to rely on an alternative program such as CAIR in lieu of source-specific BART. EPA's regulations allowing states to adopt alternatives to BART that provide for greater reasonable progress, and EPA's determination that states may rely on CAIR to meet the BART requirements, have been upheld by the D.C. Circuit as meeting the requirements of the CAA. In the first case challenging the provisions in the regional haze rule allowing for states to adopt alternative programs in lieu of BART, the court affirmed EPA's interpretation of CAA section 169A(b)(2) as allowing for alternatives to BART where those alternatives will result in greater reasonable progress than BART. *Center for Energy and Economic Development* v. *EPA,* 398 F.3d 653, 660 (D.C. Cir. 2005) (finding reasonable EPA's interpretation of CAA section 169(a)(2) as requiring BART only as necessary to make reasonable progress). In the second case, *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333 (D.C. Cir. 2006), the court specifically upheld EPA's determination that states could rely on CAIR as an alternative program to BART for EGUs in the CAIR-affected states. The court concluded that EPA's two-pronged test for determining whether an alternative program achieves greater reasonable progress was a reasonable one and also agreed with EPA that nothing in the CAA required EPA to ''impose a separate technology mandate for sources whose emissions affect Class I areas, rather than piggy-backing on solutions devised under other statutory categories, where such solutions meet the statutory requirements.'' *Id.* at 1340.

EPA also notes that CAIR has not been ''vacated'' as stated in Sierra Club's comment. As mentioned in EPA's TSD, CAIR was ultimately remanded by the D.C. Circuit to EPA without vacatur, and EPA continues to implement CAIR. EPA further notes that all of the rulemaking actions and proposed rulemaking actions cited by the commenter which discussed limited approvability of SIPs or redesignations due to the status of CAIR were issued by EPA prior to the vacatur of CSAPR when EPA was implementing CSAPR. Since the vacatur of CSAPR in August 2012 and with continued implementation of CAIR per the direction of the D.C. Circuit in *EME Homer City,* EPA has approved redesignations of areas to attainment of the 1997 fine particulate matter ($PM_{2.5}$) NAAQS in which states have relied on CAIR as an enforceable measure. *See* 77 FR 76415, December 28, 2012 (redesignation of Huntington-Ashland, West Virginia for 1997 $PM_{2.5}$ NAAQS, which was proposed 77 FR 68076, November 15, 2012); 78 FR 59841, September 30, 2013 (redesignation of Wheeling, West Virginia for 1997 $PM_{2.5}$ NAAQS, which was proposed 77 FR 73575, December 11, 2012); *and* 78 FR 56168, September 12, 2013 (redesignation of Parkersburg, West Virginia for 1997 $PM_{2.5}$ NAAQS, which was proposed 77 FR 73560, December 11, 2012).

More fundamentally, EPA disagrees with the commenter that the adequacy of the BART measures in the Virginia regional haze SIP is relevant to the question of whether the Commonwealth's SIP meets the requirements of section 110(a)(2)(D)(i) of the CAA with respect to visibility. EPA interprets the visibility provisions in this section of the CAA as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. The regional haze rule includes a similar requirement. *See* 40 CFR 51.308(d)(3). EPA notes that on June 13, 2012, EPA determined that Virginia's regional haze SIP adequately prevents sources in Virginia from interfering with the reasonable progress goals adopted by other states to protect visibility during the first planning period. *See* 77 FR 35287. *See also* 77 FR 3691, 3709 (January 25, 2012) (proposing approval of Virginia's regional haze SIP). As EPA's review of the Virginia regional haze SIP explains, the Commonwealth relied on enforceable emissions reductions already in place to address the impacts of Virginia on out-of-state Class I areas. The question of whether or not CAIR satisfies the BART requirements has no bearing on whether these measures meet the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

In addition, with regard to the visibility protection aspect of section 110(a)(2)(J), as discussed in the TSD accompanying the NPR for this rulemaking action, EPA stated that it recognizes that states are subject to visibility and regional haze program requirements under part C of the Act. In the establishment of a new NAAQS such as the 2008 ozone NAAQS, however, the visibility and regional haze program requirements under part C of Title I of the CAA do not change and there are no applicable visibility obligations under part C ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. Therefore, EPA appropriately proposed approval of Virginia's 2008 8-hour ozone infrastructure SIP revision for section 110(a)(2)(J). As discussed for section 110(a)(2)(D)(i)(II) earlier in this rulemaking action, and in the TSD for this rulemaking action, Virginia has submitted SIP revisions to satisfy the requirements of part C of Title I of the CAA.[4] In summary, EPA believes that it appropriately proposed approval of Virginia's infrastructure SIP revision for the 2008 ozone NAAQS for the structural visibility protection requirements in 110(a)(2)(D)(i)(II).

Comment 8: Sierra Club states that EPA should disapprove Virginia's 2008 8-hour ozone infrastructure SIP revision under CAA sections 110(a)(2)(D)(i)(II) (visibility prong) and 110(a)(2)(J) because, as the commenter asserts, Virginia failed to submit its ''5-year

[3] Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.* Therefore, EPA believes it is appropriate to approve Virgina's 2008 ozone NAAQS infrastructure SIP for section 110(a)(2)(D)(i)(II) as it meets the requirements of that section despite the limited approval status of Virginia's regional haze SIP.

[4] The TSD is available online at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2013–0211.

Regional Haze Progress Report'' pursuant to 40 CFR 51.308(g) by the required date. Sierra Club references a July 17, 2008 SIP submittal from Virginia as the basis for determining when the five year progress report for regional haze was due.

Response 8: EPA disagrees with the commenter that Virginia's five year progress report was overdue at the time EPA proposed to approve Virginia's infrastructure SIP for the 2008 ozone NAAQS. On July 2, 2013, the date of the proposed approval of Virginia's SIP, Virginia was under no obligation to submit a five year progress report to meet the requirements in 40 CFR 51.308(g). On October 4, 2010, the Commonwealth of Virginia submitted as a SIP revision a comprehensive regional haze plan consisting of the following: Reasonable progress goals, calculations of baseline and natural visibility conditions, a long-term strategy for regional haze, BART determinations, and a monitoring strategy as required by 40 CFR 51.308(d) and (e). Previously, on July 17, 2008, Virginia had submitted to EPA the first of five SIP revisions containing a permit and a BART determination addressing 40 CFR 51.308(e) for the control of visibility-impairing emissions from a BART-eligible source in Virginia. Virginia submitted three additional SIP revisions containing permits and BART determinations addressing 40 CFR 51.308(e) on March 6, 2009, January 14, 2010, and November 19, 2010. A May 6, 2011 SIP revision also included a permit for a source for Virginia's reasonable progress goals required by 40 CFR 51.308(d). Although the July 2008, March 2009, January 2010, November 2010, and May 2011 SIP revision submittals from Virginia included BART determinations or a permit for reasonable progress goals for specific sources in Virginia as required by 40 CFR 51.308(e) (and 40 CFR 51.308(d) for one source in the May 2011 SIP revision), EPA does not believe these five submittals were comprehensive regional haze SIP submittals intended to meet the requirements of 40 CFR 51.308(d) as well as (e). However, the October 4, 2010 SIP submittal from Virginia did contain such a comprehensive regional haze plan addressing reasonable progress goals, visibility conditions, a long-term strategy for regional haze, and a monitoring strategy as required by 40 CFR 51.308(d).

EPA believes the appropriate regional haze SIP submission which Virginia should be evaluating for its reasonable progress as required by 40 CFR 51.308(g) is the October 4, 2010 submission. Consequently, Virginia's five year progress report for 40 CFR 51.308(g) is not due until October 4, 2015, five years from the first regional haze SIP submittal which comprehensively addressed 40 CFR 51.308(d) and (e).

Finally, EPA notes that on November 8, 2013 Virginia submitted its five year progress report for 40 CFR 51.308(g) significantly in advance of its October 4, 2015 due date. On February 11, 2014, EPA signed a separate rulemaking action proposing approval of that report. EPA's review of emissions data from Virginia's five year progress report shows that emissions of the key visibility-impairing pollutant for the southeast, SO_2, continued to drop from 428,070 tons per year (tpy) in 2002 to 268,877 tpy in 2007 to 115,436 tpy in 2011. The emissions inventories also show similar substantial declines in other pollutants, particularly NO_X, between 2007 and 2011.

In summary, EPA believes that it appropriately proposed approval of Virginia's infrastructure SIP revision for the 2008 ozone NAAQS for the structural requirements in 110(a)(2)(D)(i)(II) because the progress report was not yet due on the date of EPA's publication of the proposal. Therefore, EPA finds Virginia has met the basic structural visibility protection requirements in 110(a)(2)(D)(i)(II). Additionally, as stated previously, the visibility and regional haze program requirements under part C of Title I of the CAA do not change with the establishment of a new NAAQS such as the 2008 ozone NAAQS, and there are no applicable visibility obligations under part C ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. Therefore, Virginia's obligation to submit a progress report in accordance with 40 CFR 51.308(g) is unrelated to 110(a)(2)(J), and EPA finds Virginia's 2008 ozone infrastructure SIP meets the obligations for 110(a)(2)(J).

While considering this comment, EPA became aware of an inadvertent error in the table contained in 40 CFR 51.2420(e) which incorrectly referred to Virginia's SIP submission on January 14, 2010 as January 14, 2012. EPA is correcting that error through this rulemaking action. EPA is also clarifying in the table in 40 CFR 51.2420(e) that Virginia's regional haze SIP submission was the October 4, 2010 submission as amended by the May 6, 2011 SIP submission. EPA is correcting the table to indicate that the other four SIP submissions pertained to BART determinations as required by 40 CFR 51.308(e). For further clarification, EPA is adding to the table in 40 CFR 51.2420(d) the BART permits submitted on July 17, 2008, March 6, 2009, January 14, 2010, and November 19, 2010 and the May 6, 2011 permit implementing requirements for reasonable progress as these permits are source-specific requirements which were previously approved and incorporated into the Virginia SIP but were inadvertently not added to the table in 40 CFR 51.2420(d) when approved with the regional haze SIP. *See* 77 FR 35287.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other

information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its PSD, NSR, or Title V program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the following infrastructure elements or portions thereof of Virginia's SIP revision: Section 110(a)(2)(A), (B), (C) (for enforcement and regulation of minor sources and minor modifications), (D)(i)(II) (for visibility protection), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (relating to consultation, public notification, and visibility protection requirements), (K), (L), and (M), or portions thereof as a revision to the Virginia SIP. EPA is taking separate rulemaking action on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to Virginia's PSD program and section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). This rulemaking action does not include section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the three year submission deadline of section 110(a)(1), and will be addressed in a separate process. This rulemaking action also does not include proposed action on section 110(a)(2)(D)(i)(I), because this element, or portions thereof, is not required to be submitted by a state until the EPA has quantified a state's obligations. *See EME Homer City Generation, LP v. EPA,* 696 F.3d 7 (D.C. Cir. 2012), *cert. granted,* 133 U.S. 2857 (2013). In addition, EPA is clarifying the table at 40 CFR 52.2420(e) to indicate the date of the regional haze SIP submission and dates of supplemental SIP submissions for BART provisions.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 27, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS for the Commonwealth of Virginia, may not be challenged later in proceedings to

enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Ozone.

Dated: March 7, 2014.

W. C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. Section 52.2420 is amended by:

■ a. In paragraph (d), adding the entries for Georgia Pacific Corporation, MeadWestvaco Corporation, and O–N Minerals Facility at the end of the table.

■ b. In paragraph (e):

■ i. Revising the table entry for Regional Haze Plan,

■ ii. Adding an entry for Regional Haze Plan Supplements and BART determinations after the existing entry for Regional Haze Plan,

■ iii. Adding an entry for Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS at the end of the table.

The amendments read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/Order or registration No.	State effective date	EPA Approval date	40 CFR Part 52 citation
*	*	*	*	*
Georgia Pacific Corporation	Registration No. 30389.	6/12/08	6/13/12 77 FR 35287	§ 52.2420(d); BART determination and permit.
MeadWestvaco Corporation	Registration No. 20328.	2/23/09 5/6/11	6/13/12 77 FR 35287	§ 52.2420(d); BART and Reasonable Progress determinations and permit.
O–N Minerals Facility	Registration No. 80252.	12/28/09 11/19/10	6/13/12 77 FR 35287	§ 52.2420(d); BART determination and permit.

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic or area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Regional Haze Plan	Statewide	10/4/10	6/13/12 77 FR 35287	§ 52.2452(d); Limited Approval
Regional Haze Plan Supplements and BART determinations:	Statewide		6/13/12 77 FR 35287	§ 52.2452(d); Limited Approval
1. Georgia Pacific Corporation;		7/17/08		
2a. MeadWestvaco Corporation;		5/6/11		
b. MeadWestvaco Corporation;		3/6/09		
3. O–N Minerals Facility;		1/14/10		
4. Revision to the O–N Minerals Facility permit.		11/19/10		
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	Statewide	6/23/12	3/27/14 *[Insert* **Federal Register** *page number where the document begins and date].*	This action addresses the following CAA elements, or portions thereof: 110(a)(2) (A), (B), (C), (D)(i)(II), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M) with the exception of PSD elements.

[FR Doc. 2014–06586 Filed 3–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0248; FRL–9908–48–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Carbon Monoxide Second Limited Maintenance Plan for the Pittsburgh Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision consists of a second limited maintenance plan for the carbon monoxide (CO) Pittsburgh Area (''the Pittsburgh Area'' or ''the Area'') in Allegheny County, formerly designated as a CO nonattainment area. The maintenance plan ensures maintenance of the CO national ambient air quality standard (NAAQS) in the Pittsburgh Area for a second 10-year period after redesignation of the Area from nonattainment to attainment, through year 2022. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on May 27, 2014 without further notice, unless EPA receives adverse written comment by April 28, 2014. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0248 by one of the following methods:

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

B. *Email: Fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0248, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2012–0248. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105 and at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov*.

SUPPLEMENTARY INFORMATION: On July 18, 2011, Pennsylvania Department of Environmental Protection (PADEP) submitted, on behalf of Allegheny County Health Department (ACHD), a revision to the Pennsylvania SIP, which was supplemented on November 26, 2013. The SIP revision ensures maintenance of the CO NAAQS in the Pittsburgh Area for a second ten-year period after redesignation, through year 2022.

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I. Background

A. Designations

CO is a colorless, odorless gas emitted from combustion processes. Nationally and, particularly in urban areas, the majority of CO emissions to ambient air come from mobile sources. CO can cause harmful health effects by reducing oxygen delivery to the body's organs (like the heart and brain) and tissues. At extremely high levels, CO can cause death.

EPA initially established the CO NAAQS on April 30, 1971 (36 FR 8186). The primary standards, protective of public health, were set at 9 parts per million (ppm) as an 8-hour average, and 35 ppm, as a 1-hour average, neither to be exceeded more than once per year. Later in 1971, EPA set the secondary standards identical to the primary standards for protection of the public welfare. *See* 40 CFR 50.8. In a review of the standards completed in 1985 (50 FR 37484, September 13, 1985), EPA retained the primary standard, but revoked the secondary standard due to lack of evidence of direct adverse effect on public welfare at or near ambient concentrations. Although the air quality criteria have changed over the past two decades, the CO primary standard has been retained without revision.

On September 12, 1978 (43 FR 40513), EPA designated for the first time portions of Allegheny County as a CO nonattainment area, referred to as the Pittsburgh Area. The Pittsburgh Area

was defined to include the high traffic density areas within the Central Business District of Allegheny County and certain other high traffic density areas. The Central Business District is defined as the area enclosed by the Allegheny River, the Monongahela River, and 579 interstate highway, while ''the other high traffic density areas'' are defined as the Oakland neighborhood of Pittsburgh, Pennsylvania.

As part of the 1990 CAA Amendments, a provision was added under section 186(a) which authorized EPA to classify nonattainment areas according to the degree of severity of the nonattainment problem. Specifically, CAA section 186(a)(1) provides that each area designated nonattainment for CO should be classified at the time of such designation as ''Moderate'' (9.1–16.4 ppm) or ''Serious'' (16.5 ppm and above) based on the design value of the area. Additionally, under section 107(d)(a)(C), at the date of enactment of the 1990 CAA Amendments, all areas of the country were designated with respect to ozone and CO in accordance with the pre-enactment designations by operation of the law.

On November 6, 1991 (56 FR 56694), EPA made final designations and classifications for all areas in the country for all the six criteria pollutants. The designations and classifications for CO (post-enactment of 1990 CAA Amendments) were based on quality assured air monitoring data for years 1988–1989. The Pittsburgh Area maintained its pre-enactment designation as a CO nonattainment area by operation of law. In this designation process, EPA determined that the Pittsburgh Area was a ''nonclassifiable'' area with respect CO NAAQS, based on the fact that the 1988–1989 air quality design values for the Area were below the lowest CO nonattainment classification of ''Moderate'' (below 9.1 ppm).

B. Compliance With the CO NAAQS

A monitor is meeting the CO NAAQS if over a 2-year period the second-highest 1-hour value is less than or equal to 35 ppm, and the second-highest, non-overlapping 8-hour value is less than or equal to 9 ppm. These calculated values are referred as the 1-hour and the 8-hour design value, respectively. A design value is calculated to compare to the NAAQS and determine compliance. The CO design values are usually discussed in terms of the 8-hour CO NAAQS, rather than the 1-hour NAAQS, because the 8-hour NAAQS is typically the standard of concern. The design value of an area is the highest site-specific design value of the monitors located within the area. A CO nonattainment area is considered for redesignation if the design value of the Area is below the standards, that is, if there are no violations of the CO NAAQS for two consecutive years. The method for calculating CO design values is presented in detail in EPA's June 18, 1990 memorandum, ''Ozone and Carbon Monoxide Design Value Calculations.''

C. Redesignation to Attainment and Maintenance Plan

EPA may redesignate areas to attainment if sufficient monitoring data are available to warrant such change and the area meets the criteria contained in section 107(d)(3)(E) of the CAA. These criteria include, among others, a full approval of a maintenance plan that covers at least 10 years after redesignation, and meets the requirements of section 175A of the CAA. In addition, section 175A of the CAA require states to submit a revision to the maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for 10 years following the end of the first 10-year maintenance period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

On August 17, 2001, the Commonwealth submitted to EPA a redesignation request and a maintenance plan for the Pittsburgh Area for the CO NAAQS. EPA allowed the Commonwealth to develop a ''limited maintenance plan'' (LMP) for the Pittsburgh Area in addressing the maintenance plan requirements, and thus meeting the applicable requirements for redesignation. According to EPA's October 6, 1995 guidance ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas,'' the LMP option is only available to nonclassifiable CO nonattainment areas with design values at or below the 85 percent (%) of the level of the 8-hour CO NAAQS, or 7.65 ppm. The LMP option allows the areas meeting this requirement to submit a less rigorous maintenance plan than generally required for the CO NAAQS. Since the Pittsburgh Area was designated as a ''nonclassifiable'' nonattainment area and the Area's 8-hour design value at the time of redesignation was 3.9 ppm, based on 1998–1999 quality assured air monitoring data, EPA concurred with the Commonwealth's determination of submitting an LMP for the Area. On November 12, 2002 (67 FR 68521), EPA granted the Commonwealth's redesignation request and approved as a SIP revision the maintenance plan for the Pittsburgh Area. The SIP revision ensured maintenance of the standard until January 2013.

On July 18, 2011, the Commonwealth submitted as a SIP revision a second 10-year CO maintenance plan for the Pittsburgh Area. In recognition of the continuing record of monitoring data showing ambient CO 8-hour concentrations in the Pittsburgh Area well below 7.65 ppm, ACHD once more chose the LMP option for the development of this second maintenance plan. Further discussion of the maintenance plan requirements and the LMP option is provided in section II of this rulemaking action.

II. EPA's Requirements

Section 175A defines the general framework of a maintenance plan. The maintenance plan will constitute a SIP revision and must provide for maintenance of the relevant NAAQS for at least 10 years after redesignation. Section 175A further states that the plan shall contain such additional measures, if any, as may be necessary to ensure such maintenance. In addition, the maintenance plan should contain such contingency measures as EPA deems necessary to ensure prompt correction or any violation of the NAAQS.

For nonclassifiable CO areas seeking redesignation to attainment whose design value at the time of redesignation is 85 percent or less than the 8-hour CO NAAQS, or 7.65 ppm, a state may choose to submit a less rigorous maintenance plan than generally required. This option is termed a LMP. EPA believes that the full maintenance plan requirements do not need to be applied to these areas because they have achieved air quality levels well below the standard without application of control measures required by the CAA for moderate and serious nonattainment areas. Also, these areas do not have either a recent history of monitored violations of the CO NAAQS or a long prior history of monitored air quality problems for CO. Therefore, EPA believes that for a limited maintenance area, the air quality along with the continued applicability of the prevention of significant deterioration (PSD) permitting requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the10-year maintenance period. The same applies for areas submitting their second maintenance plans.

To qualify for the LMP option, the CO design value for the area, based on the

eight consecutive quarters (two years of data) used to demonstrate attainment must be at or below 7.65 ppm for the 8-hour CO NAAQS. Additionally, the design value for the area must continue to be at or below the 7.65 ppm for the 8-hour CO NAAQS until the time of EPA's final action. According to EPA's October 6, 1995 guidance ''Limited Maintenance Plan Option for Non-classifiable CO Nonattainment Areas,'' a LMP submittal must include: An attainment emissions inventory, a maintenance demonstration, a verification of continued attainment, contingency measures, and transportation conformity determination.

As for any maintenance plan, the state should develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. This inventory should be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should include the emissions during the time period associated with the monitoring data showing attainment. Emissions of CO are generally expected to be the highest during the winter season. Thus, for CO nonattainment areas, the inventory should be based on actual ''typical winter day'' emissions for the time period associated with the monitoring data showing attainment of the standard. For more information on developing seasonal CO emissions inventories, refer to EPA's guidance documents ''Emissions Inventory Requirements for Carbon Monoxide State Implementation Plans'' (EPA–450/4–91–011, March 1991) and ''Procedures for the Preparation of Emissions Inventories for Carbon Monoxide and Precursors of Ozone; Volume I'' (EPA–450/4–91–016, May 1991).

In LMP, the maintenance demonstration requirement is considered to be satisfied if the monitoring data show that the area is meeting the air quality criteria for a limited maintenance area, 7.65 ppm. The design value requirement is expected to provide adequate assurance of maintenance over the 10-year period. The maintenance demonstration does not require the state to project emissions over the maintenance period. In LMP, to verify the attainment status of the area over the maintenance period, the state must show continuous operation of an appropriate EPA-approved air quality monitoring network, in accordance with 40 CFR part 58.

As for any maintenance plan, the state is required to adopt contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. In order for the maintenance plan to be approved, a state is not required to have full adopted contingency measures that will take effect without further action by the state; however, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered. The plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the state. As necessary, the state should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented.

Transportation conformity is required under section 176(c) of the CAA to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. The CAA requires Federal actions in nonattainment and maintenance areas to ''conform to'' the goals of the SIP. This means that such actions will not cause or contribute to violations of a NAAQS; worsen the severity of an existing violation; or delay timely attainment of any NAAQS or any interim milestone. EPA has established criteria and procedures for Federal agencies to follow in determining conformity of their actions. EPA's rule governing transportation plans and Federally supported highway, transit projects, and other activities is referred to as the Transportation Conformity Rule (*See* 40 CFR part 93, subpart A), and EPA's rule governing all other types of Federal agency actions is referred to as the General Conformity Rule (*See* 40 CFR part 93, subpart B).

Under the Transportation Conformity Rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) to demonstrate that their metropolitan transportation plans and transportation improvement plans conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEBs) contained in a SIP. While EPA's LMP option does not exempt an area from the need to affirm conformity, the area may demonstrate conformity without submitting an emissions budget. Under the LMP option, the emissions budgets are essentially not constraining for the length of the maintenance period, because it is unreasonable to expect that the qualifying area will experience so much growth in that period that a violation of the CO NAAQS would result. For this reason, any Federal actions requiring conformity determinations under the Transportation Conformity Rule could be considered to satisfy the ''budget test,'' required in 40 CFR 93.158(a)(5)(i)(A), 93.118, 93.119, and 93.120. While not subject to the budget test, the limited maintenance areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A.

III. Summary of SIP Revision

On July 18, 2011, PADEP submitted, on behalf of ACHD, a SIP revision which was then supplemented on November 26, 2013. The SIP revision consists of the second 10-year update to the CO NAAQS maintenance plan for the Pittsburgh Area, as required by CAA section 175A(b). The July 18, 2011 submission included a maintenance demonstration, a verification of continued attainment, and a contingency plan. The November 26, 2013 supplemental SIP revision included the attainment emissions inventory. The submittals also include appendices that explain the methodology used for developing emissions inventories, a technical support document, and evidence of public notice, public hearing, response to comments, and adoption of the plan. The maintenance plan also carries forward essentially the same contingency plan as contained in the initial maintenance plan. A more detailed summary of Pennsylvania's SIP submittal may be found in EPA's Technical Support Document (TSD) for this rulemaking action, which is available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2012–0248.

IV. EPA's Evaluation

A. Limited Maintenance Plan Eligibility

Monitoring data shows that the Pittsburgh Area continues to attain the CO NAAQS. Table 1 presents the historic CO 8-hour design values (i.e., the second highest 8-hour average CO levels) for the CO monitoring sites in the Area over the 1988–2013 period, as recorded in EPA's Air Quality System (AQS) and included in the submittal. As shown, the second highest 8-hour CO

average concentrations recorded at all monitoring stations in the Pittsburgh Area have remained below 7.65 ppm since 1994. In addition, ACHD reported that the 1-hour CO NAAQS has not been violated in the Pittsburgh Area since 1980, and has been below 15 ppm since 1988. Thus, monitoring data show that the Pittsburgh Area continues to be eligible for the LMP option.

TABLE 1—PITTSBURGH AREA'S CO SECOND HIGHEST 8-HOUR AVERAGE CONCENTRATIONS DURING 1988–2013, IN PPM

Year	Oakland [a] (42–003–0026)	Forbes Avenue at Grant Street (Courthouse) (42–003–0038)	Gateway Center Subway Entrance (Point) [b] (42–003–0052)	Flag Plaza (Bedford Avenue) [b] (42–003–0031)
1988	8.4	6.6	6.5	
1989	6.5	7.8	6.7	
1990	6.9	8.1	6.5	
1991	5.0	6.2	6.6	
1992	7.7	7.8	6.7	
1993	4.8	6.2	5.2	
1994	5.6	7.5	6.8	
1995	4.3	5.9	3.8	
1996	5.0	4.8	3.9	
1997	2.5	3.9	2.9	
1998		4.9	3.1	
1999		4.0	3.1	
2000		3.5	2.6	
2001		3.4		
2002		2.9		
2003		3.5		2.2
2004		2.5		1.9
2005		2.3		1.8
2006		2.1		1.8
2007		3.5		1.3
2008		1.6		1.3
2009		1.5		1.3
2010		1.7		1.2
2011		1.6		1.4
2012		1.7		1.5
2013[c]		1.5		1.4

Source: Pennsylvania's July 18, 2011 SIP submittal and EPA's January 9, 2014 AQS Reports AMP450.
[a] The CO monitor at the Oakland site (AQS ID: 42–003–0026) was terminated in October 1997, as approved by EPA.
[b] EPA approved the removal of the CO monitor at the Gateway Center Subway Entrance (Point) (AQS ID: 42–003–0052) in May 2000 and its relocation to the Flag Plaza (AQS ID: 42–003–0031) near the Civic Arena, which started operating in 2003.
[c] Air quality monitoring data for 2013 is preliminary.

B. Attainment Emissions Inventory

For the CO maintenance plan, ACHD developed a 2008 attainment emissions inventory to identify the level of actual emissions in the Pittsburgh Area that is sufficient for the Area to continue to attain the CO NAAQS. The Pittsburgh Area's CO attainment inventory is based on the latest available planning assumptions for 2008, reflecting typical winter day CO emissions for the Area. ACHD selected the 2008 year for its attainment emissions inventory because it contained at the time of submittal the most current and comprehensive emissions estimates that were representative of actual emissions in Allegheny County, and because during this time the air quality was showing maintenance of the CO NAAQS in the Area. The 2008 emissions inventory is based on EPA's 2008 National Emissions Inventory (NEI) (Version 2, April 10, 2012) for the months of January, February and December, and seasonal adjustment factors were applied as necessary.

The 2008 attainment inventory contains CO typical winter day emissions estimates of point, area, mobile onroad and mobile nonroad sources in the Area. The primary source of CO emissions in the Pittsburgh Area is the onroad (highway) sources, contributing to 54% of total CO emissions of the Area. Table 2 provides a summary of the 2008 attainment inventory submitted with the maintenance plan. For a more detailed evaluation of the 2008 emissions inventory, see EPA's TSD dated February 4, 2014 for this rulemaking action, which is available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2012–0248.

TABLE 2—PITTSBURGH AREA'S CO 2008 ATTAINMENT EMISSIONS INVENTORY, IN TONS PER DAY (TPD)

Source category	CO typical winter day emissions
Point	22.76
Area	57.65
Onroad	396.38
Nonroad	96.99
Total	573.78

C. Maintenance Demonstration

Under the LMP option, there is no requirement to project emissions over the 10-year maintenance period for the Pittsburgh Area, as long as the Area continues to have CO air quality at or below 7.65 ppm. The monitoring data presented in Table 1 show that the Pittsburgh Area has historically measured and continues to measure concentrations below 7.65 ppm. The continuous downward trend in CO monitoring data in the Area has

demonstrated that air quality improvements can be attributed to permanent, enforceable reductions of CO emissions. In addition, EPA acknowledges that Allegheny County has a SIP-approved PSD permitting program (78 FR 13493, February 18, 2013), which prevents increase of CO emissions from construction or modification of major stationary sources. EPA believes that the LMP eligibility together with the continuation of existing CO emissions control programs, sufficiently and adequately demonstrate that the Pittsburgh Area will maintain the CO NAAQS through the second 10-year maintenance period and beyond.

Although not required, ACHD included a maintenance demonstration as part of its second maintenance plan to show maintenance of the CO NAAQS during the second 10-year period for the Pittsburgh Area. ACHD used projected inventories to show that the Pittsburgh Area continues to remain in attainment and developed projected inventories for an interim year of 2013 and a maintenance end year of 2022. The projected 2013 and 2022 emissions inventories include typical winter day CO emissions estimates only for the onroad sources in the Pittsburgh Area. As mentioned earlier in this rulemaking action, this sector constitutes the primary emissions source category in the Pittsburgh Area, thus emissions reductions from this source category should be sufficient to demonstrate maintenance of the CO NAAQS for the Area. The projected 2013 and 2022 onroad emissions inventories were developed with EPA's latest highway emissions model at the time of submittal, MOVES2010a,[1] in accordance with EPA's ''Technical Guidance on the Use of MOVES2010a for Emission Inventory Preparation in State Implementation Plans and Transportation Conformity.''

ACHD used growth rates based on 2008 local traffic data and socioeconomic forecasts to project traffic parameters to 2013 and 2022 data. Daily and monthly seasonal factors were used to adjust traffic data to a typical winter day. The projected inventories take into account control measures which were in place in 2008 and are expected to be in place throughout 2022 for Allegheny County, which include: The National Low Emission Vehicle Program (NLEV) and Federal Tier II Low Sulfur Program, emissions standards for medium and heavy duty vehicles in 2002, 2004, 2007, and 2011, Stage II and Onboard Refueling Vapor Recovery (ORVR), and the Pennsylvania Clean Vehicles (PCV) Program (PaCode, Title 25, Chapter 126) that incorporates the California Low Emission Vehicle Program (CA LEVII).

After thorough review of the methodology and data assumptions used by ACHD, EPA finds that the 2013 and 2022 emissions inventories were developed in conformance with EPA's guidance, and therefore, are approvable as part of the maintenance demonstration. A summary of the projected onroad CO emissions inventories for the Pittsburgh Area is provided in Table 3. A more detailed evaluation and EPA's rationale for approving the 2013 and 2022 inventories may be found in EPA's TSD for this rulemaking action, which is available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2012–0248.

TABLE 3—PITTSBURGH AREA'S CO PROJECTED 2013 AND 2022 VEHICLE MILES TRAVELED (VMT) AND TYPICAL WINTER DAY EMISSIONS FOR ONROAD SOURCES, IN TPD

2013		2022	
VMT	CO typical winter day emissions	VMT	CO typical winter day emissions
25,727,530	394.53	28,377,731	336.27

The purpose of the maintenance demonstration is to show that future CO emissions will remain at or below the 2008 attainment emissions levels for the Pittsburgh Area through the 2022 maintenance plan end year. Table 4 provides a comparison of the CO emissions inventories for the Pittsburgh Area for the 2008 attainment year, the 2013 interim year, and the 2022 maintenance plan end year. Despite the projected increase in VMT (see Table 3) in the Area, the inventories show that the CO emissions between 2008 and 2022 for the Area are projected to be reduced by 15 percent, due to the implementation of the vehicle control measures in Allegheny County. EPA finds that the maintenance demonstration shows that the Pittsburgh Area will continue to maintain the CO NAAQS during the second maintenance period, throughout 2022.

TABLE 4—COMPARISON OF THE 2008, 2013, AND 2022 CO TYPICAL WINTER DAY EMISSIONS INVENTORIES FOR ONROAD SOURCES IN THE PITTSBURGH AREA, IN TPD

Emissions of onroad sources			Emissions reductions	
2008	2013	2022	2008–2013	2008–2022
396.38	394.53	336.27	1.85	60.11

D. Monitoring Network and Verification of Continued Attainment

In accordance with 40 CFR part 58, ACHD operates and maintains an EPA-approved CO monitoring network in the Pittsburgh Area, in order to verify attainment of the CO NAAQS and ensure the need to trigger contingency measures. Currently, the monitoring network consists of two monitoring sites: The Forbes Avenue and Grant Street site (AQS ID: 42–003–0038) and

[1] MOVES2010 is a computer model designed by EPA to estimate air pollution emissions and emissions inventories of various pollutants and precursors from on-road mobile sources for SIP and transportation conformity purposes. MOVES2010 was designed to replace the previous emissions model, MOBILE6.2, which was released in 2004 (69 FR 28830). MOVES2010 was released on March 2, 2010 (75 FR 9411), while MOVES2010a, a minor revision to enhance model performance, was released subsequently on September 8, 2010. ACHD used MOVES2010a in developing the projected emissions inventories.

the Flag Plaza site (AQS ID: 42–003–0031), whose data is eligible for comparison to the CO NAAQS.

EPA believes ACHD's current CO monitoring network is adequate to verify continued attainment of the CO NAAQS in the Pittsburgh Area. ACHD has committed to continue maintaining a CO monitoring network in accordance with EPA's requirements.

E. Contingency Plan

The Pittsburgh Area's second CO maintenance plan carries forward the same contingency provisions that were included in the first maintenance plan and previously approved by EPA. As a triggering event for implementation of the contingency measures of this plan, a verified ambient CO concentration for an 8-hour period over the 8-hour CO NAAQS, or 9.00 ppm, must be recorded at least twice at one monitor station from November to February. In the event of a violation of the 8-hour CO NAAQS, a ''vehicle idling restriction'' will be implemented as a contingency measure. The vehicle idling restriction is applicable from November to February throughout Allegheny County and consists of limiting to five minutes the amount of time that a gasoline engine vehicle is permitted to idle. This restriction will have the following exceptions: The need for heating and powering of refrigeration systems on trucks, operation of emergency vehicles and vehicles that are motionless due to traffic conditions beyond operator's control. Three (3) months after ACHD records a violation or once EPA notifies ACHD that this contingency measure must be implemented, ACHD will adopt within 12 months the vehicle idling restriction as a regulation. The regulation will be implemented within 8 months after adoption. In the future, ACHD may request EPA to consider the approval of alternative contingency measures by providing a demonstration that the alternative measures will provide an air quality and public health benefit equal to or greater than that resulting from the implementation of the idling restriction. EPA finds this contingency measure approvable for purposes of satisfying CAA section 175A.

F. Transportation Conformity

ACHD did not submit any MVEBs with the Pittsburgh Area's CO second maintenance plan. However, EPA believes that the second maintenance plan demonstrates that it is unreasonable to expect that the Area would experience enough growth in motor vehicle (onroad) emissions for a violation of the CO NAAQS to occur, and on that basis, EPA is proposing to approve this plan for transportation conformity purposes. In accordance with the Transportation Conformity Rule, after EPA's approval of this limited maintenance plan, there will be no requirement for ACHD to satisfy the regional emissions analysis with respect to CO under 40 CFR 93.118 and/or 40 CFR 93.119 in determining the conformity of transportation plans, programs and projects in the Pittsburgh Area. *See* 40 CFR 93.109(e).

V. Final Action

EPA finds that the Pittsburgh Area second CO maintenance plan concurs with EPA's guidance for limited maintenance plans and thus, satisfies the requirements of CAA section 175A. EPA is approving as an update to the Pennsylvania SIP the Pittsburgh Area CO second maintenance plan, which was submitted as a SIP revision by the Commonwealth of Pennsylvania on July 18, 2011 and supplemented on November 26, 2013. The plan demonstrates maintenance of the CO NAAQS in the Pittsburgh Area for a second 10-year period after redesignation, through year 2022.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 27, 2014 without further notice unless EPA receives adverse comment by April 28, 2014. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 27, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action, approving the Pittsburgh Area's CO second maintenance plan, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 7, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by revising the entry for Carbon Monoxide Maintenance Plan for the City of Pittsburgh. The revised text reads as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Carbon Monoxide Maintenance Plan.	City of Pittsburgh—Central Business District & Oakland.	8/17/01	11/12/02 67 FR 68521	52.2063(c)(189).
		7/18/12; 11/26/13	3/27/14 [*Insert page number where the document begins*].	Limited maintenance plan covering the 10-year period through 2022.
*	*	*	*	*

* * * * *

[FR Doc. 2014–06697 Filed 3–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL 9908–64–Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Coleman-Evans Wood Preserving Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is publishing a direct final Notice of Deletion of the Coleman-Evans Wood Preserving Superfund Site (Site), located in Whitehouse, Florida, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Florida, through the Florida Department of Environmental Protection (FDEP), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective May 27, 2014 unless EPA receives adverse comments by April 28, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: kestle.rusty@epa.gov.*
- *Fax:* 404–562–8896.
- *Mail:* Rusty Kestle, 61 Forsyth Street SW., Atlanta, GA 30303–8909.
- *Hand Delivery:* Rusty Kestle, 61 Forsyth Street SW., Atlanta GA 30303–8909. 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–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public 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 *http://www.regulations.gov* or email. The *http://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 *http://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.

Docket: All documents in the docket are listed in the *http://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 statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

61 Forsyth Street SW., Atlanta GA 30303–8909, Monday through Friday, 9 a.m. to 5 p.m., or

West Regional Jacksonville Public Library, 1425 Chaffee Rd S., Jacksonville, FL 32221, Mon–Thu: 10 a.m.–9 p.m., Fri & Sat: 10 a.m.–6 p.m. Sun: CLOSED.

FOR FURTHER INFORMATION CONTACT:

Rusty Kestle, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta GA 30303–8909, (404) 562–8819, email: *kestle.rusty@epa.gov*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 4 is publishing this direct final Notice of Deletion of the Coleman-Evans Wood Preserving Superfund Site (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective May 27, 2014 unless EPA receives adverse comments by April 28, 2014. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Coleman-Evans Wood Preserving Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the state of Florida prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the FDEP, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, The Florida Times-Union. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of

the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Coleman-Evans Wood Preserving Site (CERCLIS ID FLD991279894) is an 11-acre former wood preserving facility, located in the community of Whitehouse, Duval County, Florida, approximately eight miles west of downtown Jacksonville, Florida. Duval County lies within the drainage basin of the St. Johns River, in northeast Florida. The topography is coastal plain; however, rolling hills predominate throughout the county. The land use in the vicinity of the Site is mixed residential, light industrial and commercial. The Coleman-Evans Site is bordered on the north by the CSX Railroad, on the south by residential homes along General Avenue, on the east by heavy vegetation, and on the west by primarily commercial properties across Celery Avenue with residences to the southwest.

The Site is a former wood preserving facility that produced treated lumber from 1954 to the mid-1980s. Effluent wastewater from the treatment process was discharged to a drainage ditch which channeled the water south, eventually into McGirt's Creek. The Site utilized sludge pits and above ground storage tanks to store its wastes until site operations ceased in the late 1980's. Although wood-treating operations ceased in the late 1980's, sawing and kiln drying of untreated lumber continued at the Site until mid-1994. After that time, all commercial activities at the Site ceased. Due to poor waste management practices, soil and ground water in the vicinity of the Site became contaminated with pentachlorophenol (PCP) and dioxin.

The soil, sediments, surface water and ground water at the Site were contaminated with PCP and dioxin. The nature and extent of the contamination, both on and off the former facility property was defined through a series of investigations and treatability studies conducted between 1986 and 2006. Contaminant release on the former facility property occurred through poor waste management practices, and adjacent properties were impacted by wastewater discharge to a drainage ditch, which channeled the water south to McGirts Creek. The drainage ditch often overflowed spreading pentachlorophenol and dioxin contamination through the downstream residential properties. The surficial aquifer beneath the former facility property also was impacted by contamination, but is separated from the deeper drinking water aquifer by an aquitard.

Residential properties adjacent to and near the former facility property use private water supply wells completed in the upper portion of the deeper limestone aquifer for domestic supply. No site-related ground water contamination has been detected in this limestone aquifer or in these domestic supply wells. The human health risk assessment identified the site surface soil as a medium of concern for both current and future residents and commercial/industrial workers. Ground water also was a concern for future residents. The aggregate risks for the Site were an incremental lifetime cancer risk of greater than 1.0×10^{-6} and a hazard index of greater than 1.

In October, 1981, the Site was proposed for inclusion on the National Priorities List (NPL), based on a hazard ranking score of 59.14 and was proposed to the NPL in September of 1982 and added to the NPL in March, 1983 under 40CFR, Table 1 of Appendix B to part 300.

Redevelopment and Future Land Use

As part of the reuse planning for the former facility property, EPA provided a reuse planning grant to the City of Jacksonville which hired HDR/Landers Atkins Planners to research and develop alternatives for future use of the Site property. The Master Plan provides a guideline for the development of a park on the undeveloped 11 acre parcel. The scope of work for the Master Plan included three phases. These include: analysis and data gathering, plan alternatives and conceptual design, and the generation of the final Master Plan. The goal of the Master Plan was to provide a safe and functional place for the local residents to participate in recreational activities. Four concepts were considered in the development of the Master Plan. The final Master Plan includes the following features: auto circulation and parking, provision of domestic water and sewer utility, a community center and gymnasium, sports courts, passive recreation facilities, pedestrian circulation, and security.

The planned future use of the former facility property is considered compatible with the expected future use of the surrounding properties. This reflects continued growth in residential land use in west Jacksonville along with the supporting commercial development. Since much of the area around the former facility is zoned commercial/residential and is in close proximity to Chaffee Road and Interstate-10, the area impacted by OU2 may experience a changeover from predominantly residential to commercial land use in the future. Ground water use for domestic supply is being supplanted by municipal water and sewer systems in the community of Whitehouse. It is reasonable to expect that residential and commercial properties along General Avenue will be served by the municipal water system in the future. No significant changes in the patterns of surface water flow are anticipated in the foreseeable future.

Response Actions, Remedial Investigation and Feasibility Study (RI/FS), Selected Remedy Cleanup Goals

Removal Activities

In June, 1985, EPA issued a Removal Order to the Coleman-Evans Wood Preserving Company pursuant to Section 106 of the Comprehensive Environmental Resource and Conservation Liability Act (CERCLA). Coleman-Evans did not comply with the CERCLA Section 106 Removal Order, and EPA then conducted Emergency Response Actions at the Site in 1985 and 1993 to control the major sources of PCP contamination in the upper surficial aquifer and to protect nearby residents from exposure.

In April, 1988, a CERCLA Section 106 Order was issued to the Coleman-Evans Wood Preserving Company to implement the remedial design and remedial action (RD/RA).

OU1 Remedy Selection

EPA has chosen to use two Operable Units (OUs) for the Coleman-Evans Wood Preserving Company Superfund Site. OU1 addresses contaminated soil, sediments, surface water and ground water that was present on and adjacent to the former facility property and soil contamination present in areas within the surface water drainage pathway leading from the facility. OU2 addresses residual dioxin contamination in

surface soil outside the areas addressed by OU1.

In April, 1986, the remedial investigation (RI), which characterized the extent of contamination at the Site and identified PCP as the primary chemical-of-concern (COC) at the Site, was completed. PCP was shown to be present in sediment, soil, surface water, and in the upper surficial aquifer.

In September, 1986, the original Record of Decision (ROD) for OU1 was signed. The 1986 ROD required excavation and incineration of PCP contaminated soil at levels greater than 10 milligrams per kilogram (mg/kg) and recovery of PCP contaminated ground water at levels greater than 1 microgram per liter (μg/L) with treatment via carbon adsorption.

In September, 1990, an Amended ROD (AROD) was signed. The AROD changed the soil remedy to the treatment and on-site disposal of PCP contaminated soils, sediments, and sludges at levels greater than 25 mg/kg via soil washing, bio-treatment, solidification/stabilization (S/S), on-site treatment and disposal of contaminated ground water collected during excavation, disposal of on-site structures, closure of sand filter units, and institutional controls.

In June, 1992, additional soil sampling determined that dioxin/furans are also chemicals of concern (COCs) at the Site. Additional investigation and treatability studies were conducted at the Coleman-Evans Site between 1992 and 1997.

In September, 1997, the EPA selected an Interim Remedial Action (IRA) for the Site in an AROD, which included the excavation of contaminated soil and sediment on and off the former facility property followed by on-site treatment using high-temperature thermal desorption, an innovative technology at the time. The IRA also provided for the collection, treatment, and discharge of contaminated ground water from the upper surficial aquifer at the site, collecting free-product for recycling and/or off-site disposal, and relocating residents, as necessary, to facilitate construction. The 1997 AROD for OU1 set final cleanup goals noted in Table 1 for contaminants in all media except the cleanup goal for dioxin in soil which was interim pending establishment of a federal and/or State standard.

The cleanup action for OU1 included issuance of four Explanation of Significant Differences (ESD) in June, 2001, August, 2003, February, 2004, and September, 2005 to address the addition of a pollution control device to the treatment system, two increases in the estimated volume of soil, sediment and debris requiring treatment, and a change in the technical approach to completion of the ground water remedy.

Soil treatment was completed in May, 2004 when cleanup goals for soils and sediment established for OU1 in the 1997 Amended ROD and noted in Table 1 were achieved for the Site. Ground water contamination was reduced to a small exceedance of ground water cleanup goals established in the 1997 Amended ROD and noted in Table 2 in a single well that is being monitored for natural attenuation. During the course of this action, over 210,000 net wet tons of soil were treated and placed on the facility property, and approximately 73,500,000 gallons of ground water and storm water were treated and discharged.

OU2 Remedy Selection

The ROD for OU2 was signed in September, 2006. The selected remedy in the 2006 ROD includes the following remedial components: excavation and on-site disposal of site-attributable dioxin contamination in exceedance of cleanup goals noted in Table 3 located in areas on and adjacent to the former facility property and adjacent to drainage pathways which may have been impacted by contaminated storm water runoff from the Site; restoration of excavation areas with clean topsoil and revegetation; placement of a nominal 2-foot cover over the excavated soils that were disposed on the former facility property during OU1 and OU2 remedial activities; and establishment of a restrictive covenant limiting on-site land use to commercial/industrial use (including use as a park). This action represents the final remedy selected for the Site, and, as such, is compatible with the intended future use of the Site. This action also is compatible with and complimentary to the action for OU1.

OU1 and OU2 Cleanup Goals

The soil cleanup levels are primarily risk-based and the ground water cleanup levels are based on applicable or relevant and appropriate requirements (ARARs) and/or are risk-based. The ground water cleanup level ARARs are health based and are the most stringent of federal or state primary drinking water standards.

OU1 Remedial Action

In 1997, EPA tasked the United States Army Corps of Engineers, Kansas City District, (USACE–NWK) to prepare the RD and to contract for the Remedial Action (RA) phase. The RD was completed in 1998. The RA contract was awarded by USACE–NWK to Fluor Daniel-GTI (FD–GTI) in 1999. Shortly after, FD–GTI was purchased by IT Corporation, which went into bankruptcy in 2001. IT Corporation was acquired by Shaw Environment and Infrastructure, Inc. (Shaw E&I) in 2002. This contract included a requirement that the thermal treatment portion be subcontracted to a third party under a fixed price subcontract. Roy F. Weston (Weston) was awarded the subcontract for thermal treatment.

FD–GTI mobilized to the site in May, 1999. FD–GTI performed all the site preparation work, mobilization of temporary facilities, installation of utilities, site access grants, equipment removal and disposal, and site clearing and grubbing. Weston mobilized their Thermal Desorption Unit (TDU) to the site in April, 2000. A Proof of Performance (POP) test showed that the unit was not able to meet the soil treatment standards. Weston had to replace this unit and design a new TDU. The new TDU was put into service in October, 2001. The new TDU passed a second POP test in October, 2001. Full scale operations continued through March, 2004.

Excavation grids were established across the site and in the drainage ditch to McGirt's Creek. The excavations were subdivided into 2,500 square foot areas. The soil was removed in 2-foot intervals. Five-point composite samples were collected from each floor area and sidewall samples were collected every 100-linear feet along the excavation perimeter to ensure that soil cleanup goals noted in Tables 1 and 3 were met. When the soils along the excavation perimeter did not meet the cleanup levels, the excavations were deepened by 2 feet and the side walls were extended by 2 feet. Oversized debris that was encountered during the excavation was sent for off-site disposal. Nearly all of the excavations zones grew beyond their original dimensions based on confirmatory soil sampling results. The original estimated volume of soil to be excavated in the 1997 AROD was 52,265 cubic yards. The final quantity was 170,000 cubic yards, which is an estimated 320% increase in soil volume that required treatment.

The ground water encountered during the excavation activities was managed through dewatering. All ground water encountered during excavation was collected and treated on-site, then discharged to the existing drainage ditch. All storm water collected during excavation activities, and decontamination water produced during the RA also was treated on-site and discharged as part of site operations.

Two inspections were conducted, a pre-final and final inspection, and both

were conducted with representatives of the U.S. Army Corps of Engineers—Jacksonville District (USACE–SAJ), FDEP, and the U.S. Environmental Protection Agency (EPA) participating. These inspections fulfilled both the requirements for closeout of the construction contracts between USACE and the Remedial Action contractors, as well as the joint inspection requirement of the National Contingency Plan (40 CFR Section 300.515(g)).

The pre-final inspection was performed on March 2, 2004, prior to completion of thermal treatment of soil and during initial demobilization activities by the contractors at the Site. The completion requirements for the soil-phase of the Interim Remedial Action were modified from those in the Remedial Action contract by a February, 2004 Explanation of Significant Differences (ESD). This ESD recognized that certain contract items associated with site restoration would be re-sequenced to the ground water-phase of the action to coincide with final decision-making for the Site soils and due to cost limitations. The items included in the ESD were final debris disposal (pending a delisting determination) and final grading and topsoil placement (pending a decision on the final thickness of topsoil required).

During the pre-final inspection, a number of items were identified as necessary for the completion of soil-phase activities. These items were documented in a punch list.

The final inspection was performed on August 24, 2004, following substantial completion of the punch list items and Remedial Action contractor demobilization. The punch list items were reviewed and formed a basis for the final inspection. During the final inspection, some additional items were identified by FDEP and EPA. These items were substantially completed by USACE–SAJ by September 10, 2004. Ongoing activities included maintaining the vegetative cover and maintaining site security. The physical construction of the OU1—Phase 1 Remedial Action of the Coleman-Evans Wood Preserving Superfund Site was acceptably completed on September 24, 2004.

Based on the data collected during the ground water supplemental RD phase in 2004, an ESD was completed in 2005 that replaced the ongoing ground water pump and treatment selected in the 1997 AROD with a monitored natural attenuation (MNA) ground water remedy. Ground water monitored natural attenuation has been performed by EPA's Science and Ecological Support Division (SESD), and the monitoring results indicate that PCP cleanup levels in ground water have been achieved.

OU2 Remedial Action

The EPA tasked Black & Veatch Special Projects Corporation (Black & Veatch) to prepare the RD for OU2 in October, 2006 in accordance with 2006 ROD. The design was completed in May, 2007. Vertical delineation soil sampling performed as part of the RD identified that some of the proposed excavation areas would need to be excavated deeper. In early 2007, a meeting was held at the Site with EPA, FDEP and USACE–SAJ to field verify the limits of the excavation areas based on site features and to identify the four ''hot spots'' that were included in the 2006 ROD with locations to be determined in discussion with FDEP. All of the areas were identified and the RD was finalized.

The EPA awarded the RA phase to Black & Veatch in May, 2007. Black & Veatch subcontracted the construction activities to WRS Environment & Infrastructure, Inc. (WRS) in June, 2007. Construction activities began on July 5, 2007 with site surveying, installation of temporary facilities, a tree inventory, property access agreements, and installation of erosion and sediment controls. Upon receipt of the backfill sample analytical data, the excavation activities began. All of the excavation areas have been excavated and backfilled as specified in the RD.

Area 9 is located contiguous to the former excavation along the western side of the drainage ditch south of General Avenue. Confirmatory soil sampling collected from this area in April, 2007 demonstrated that the area was contaminated with dioxin above the OU1 cleanup level of 1.0 ppb. As a result, this area was subdivided into 3 sub-areas. All of the soils excavated from Area 9 were staged on-site in roll-off containers and sampled for waste characterization. Based on the waste characterization data, the roll-offs were transported off-site for incineration and disposal at Port Arthur, Texas.

During the OU2 construction activities, selected monitoring wells agreed upon by EPA and FDEP were abandoned properly in accordance with State of Florida requirements on August 13 and 14, 2007. The wells remaining on-site were required as part of the ground water MNA program or require more recent sample data in order to make final decision on the abandonment.

Repair to the head wall on the northern end of the 36-inch elliptical pipe, repairs to a damaged section of the pipe, and installation of the storm water conveyance structures were completed in August, 2007. Construction of the nominal 2-foot cover and final site grading and surveying also were complete in August, 2007. Sod was laid on the residential properties as part of site restoration. Hydro-seeding of the facility property was performed in late August, 2007.

EPA and Florida FDEP performed a joint pre-final inspection of the remedial action construction for the final remedy at the Coleman-Evans Wood Preserving Superfund Site on August 24, 2007. Participants in the inspection included: David Keefer (EPA), John Sykes (FDEP), Mike Schultz (USACE–SAJ), Clark Langston (USACE–SAJ), Daralene Pondo (BVSP), Kevin Brown (BVSP), David Behnke (BVSP), and Mark Talarico (WRS). The inspection was performed by reviewing the physical condition/status of each remedy component and the corresponding records beginning with the components of the remedy located off the former facility property. Punch list items were completed for each remedy component.

EPA and FDEP conducted a joint final inspection on September 14, 2007, and determined that the contractors have constructed the OU2 remedy in accordance with the RD plans and specifications which were developed in accordance with the final RODs for the Site.

Operation and Maintenance

All substantial elements of the physical construction of the remedy have been completed, and the remedy is currently protective of human health and the environment. Remaining activities include ensuring establishment of the vegetative cover on the facility property and issuance of the restrictive covenant/deed restriction. Institutional controls are a required component of this remedy since contaminated material will remain on-site. The restrictive covenant was established to limit the use of the former facility property to commercial/industrial (including use as a park) as an institutional control. The restrictive covenant ensures that the land use remains non-residential and that appropriate precautions are taken for any potential future intrusive subsurface work activities (e.g., installation of utility lines) in order to prevent disturbance of subsurface waste soil and ensure the short- and long-term effectiveness of the remedy. The institutional control also ensures that appropriate site access and precautions are in place for the duration of the

ground water monitored natural attenuation.

The Sitewide Interim Remedial Action Report was finalized in July 2008. A Sitewide RA Report was signed in May 2013 since all ground water cleanup goals specified in the 1997 AROD have been met, the remedy is operational and functional, and all inspections have been completed.

The Operation and Maintenance (O&M) Plan for the Site was prepared by EPA in 2009 and O&M activities have been taking place for the past four years. The City of Jacksonville is the current property owner and is therefore responsible for conducting O&M at the Site. As part of the current O&M plan, the vegetation on the cap must be maintained and the institutional controls enforced as part of the selected remedy.

Five-Year Reviews

Pursuant to CERCLA section 121(c), 42 U.S.C. 9601 *et seq.,* and EPA's Five-Year Review Guidance (EPA, 2001), because this remedy will result in hazardous substances, pollutants, or contaminants remaining on-site above levels that allow for unlimited use and unrestricted exposure, a statutory review must be conducted every five years after initiation of remedial action at the Coleman-Evans Wood Preserving Company Superfund Site to ensure that the remedy is protective of human health and the environment. The remedies at the Site overall currently protect human health and the environment because all contaminated soil has been treated; contaminated ground water is limited to the surficial aquifer on the former facility property; samples from private wells demonstrate that ground water contamination has not impacted the intermediate aquifer; and the Site is located in a Florida Delineated Area which restricts the installation of ground water wells. The second Five-Year Review (E2, 2009) was signed on June 20, 2009, and determined that the OU1 selected remedy to be protective in the long-term on the former facility property contaminant concentrations if groundwater contamination continued to decrease to the cleanup standards, the restrictive covenant (which limits future land use on the former facility property to commercial and recreational use and limits disturbance of the soil cover) was finalized to prevent the potential creation of exposure pathways at the site, and an O&M plan was developed to ensure the vegetative cover over the treated soil on the former facility property is maintained. All of these actions have since been achieved (EPA, 2013). The second Five-Year Review also determined that the OU2 selected remedy is protective in both the short-term and long-term in the areas off of the former facility property since the residential areas were cleaned up to the 7 ppt Florida residential soil dioxin standard and the other areas within OU2 were cleaned up to the 30 ppt Florida industrial/commercial soil dioxin standard. The third Five-Year Review will be completed prior to June 20, 2014, which is five years since the last review was completed.

Community Involvement

Community involvement activities were undertaken throughout the thirty year history of the site in the form of public meetings, five-year review interviews and site update mail-outs. There are currently no major community concerns about the site. The five-year review community involvement process will continue to monitor any potential community concerns.

Determination That the Site Meets the Criteria for Deletion in the NCP

The implemented remedy achieves the degree of cleanup and protection specified in the RODs for the site for all pathways of exposure. The selected remedy at the Site is protective of human health and the environment in the short-term because all exposure pathways that could result in unacceptable risks are being controlled. Contamination remaining on-site is being contained to the capped portion. The remedy will be protective in the long-term because institutional controls are in place in the form of land and ground water use restrictions; the fence needs to be kept closed completely to prevent Site access by trespassers who could disturb the cap and vegetative cover. These institutional controls are in the form of a Declaration of Restrictive Covenant executed between FDEP and the current property owner of the former facility portion of the Site, the City of Jacksonville. This declaration was executed on the 29th of September, 2009, and restricts activities on the property and the future use of the property. This declaration also increases the protectiveness of the completed remedial action in the future. All selected remedial and removal actions, remedial action objectives, and associated cleanup goals are consistent with EPA policy and guidance; EPA has followed the procedures required by 40 CFR 300.425(e) and these actions, objectives and goals have all been achieved and, therefore, no further Superfund response is needed to protect human health and the environment.

V. Deletion Action

The EPA, with concurrence of the State of Florida through the FDEP, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews, have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective May 27, 2014 unless EPA receives adverse comments by April 28, 2014. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

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

Dated: December 13, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN]

■ 1. The authority citation for part 300 continues to read as follows:

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

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry for ''FL,'' ''Coleman-Evans Wood Preserving Co.'', ''Whitehouse''.

[FR Doc. 2014–06700 Filed 3–26–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9908–42–Region–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Moyer's Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final Notice of Deletion of the Moyer's Landfill Superfund Site (Site) located in Lower Providence Township, Montgomery County, Pennsylvania, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective May 27, 2014 unless EPA receives adverse comments by April 28, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov*. Follow on-line instructions for submitting comments.
- *Email: fang.sharon@epa.gov.*
- *Fax:* (215) 814–3002, Attn: Sharon Fang.
- *Mail:* U.S. Environmental Protection Agency, Region III, Attn: Sharon Fang (3HS21), 1650 Arch Street, Philadelphia, PA 19103–2029.
- *Hand Delivery:* U.S. Environmental Protection Agency, Region III, Attn: Sharon Fang (3HS21), 1650 Arch Street, Philadelphia, PA 19103–2029, Phone: 215–814–3018, Business Hours: Mon. thru Fri.–9:00 a.m. to 4:00 p.m. 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–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public 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 *http://www.regulations.gov* or email. The *http://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 *http://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.

Docket

All documents in the docket are listed in the *http://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 the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Region III, Superfund Records Center, 6th Floor, 1650 Arch Street, Philadelphia, PA 19103–2029; (215) 814–3157, Monday through Friday 8:00 a.m. to 5:00 p.m.

The Lower Providence Township Building, 100 Parkland Drive, Eagleville, PA 19403; phone (610) 539–8020. Monday through Friday 8:00 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Sharon Fang, Remedial Project Manager (3HS21), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029; (215) 814–3018; email: *fang.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
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I. Introduction

EPA Region III is publishing this direct final Notice of Deletion of the Moyer's Landfill Superfund Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective May 27, 2014 unless EPA receives adverse comments by April 28, 2014. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Moyer's Landfill Superfund Site and

demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the Commonwealth, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates such action is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the Commonwealth of Pennsylvania prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete the Site co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA provided the Commonwealth 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the Commonwealth, through PADEP, concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, the Pottstown Mercury. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date, and will prepare a response to comments and continue with the deletion process, as appropriate, on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

Moyer's Landfill (EPA Identification Number (PAD980508766) is a 65-acre inactive privately owned landfill located at Moyer Road in Collegeville, Lower Providence Township, Montgomery County, Pennsylvania. The Site is about twenty-seven (27) miles northwest of Philadelphia, Pennsylvania. According to the 2010 Census, Lower Providence Township has a population of 25,436.

The Site consists of open land surrounded by wooded areas on steep slopes. The landfill is fenced off and covered with vegetation. Located on the Site are leachate collection tanks and a wooden storage shed in the south valley. Runoff is directed towards stormwater basins around the perimeter of the landfill and routed off the landfill cap. The Skippack Creek is located about 350 feet north-west of the landfill. The Skippack Creek then discharges into the Perkiomen Creek which eventually discharges into the Schuylkill River.

The current owner of the landfill property is Grange Environmental. There are no current development plans, though the Township has expressed interest in purchasing the property to preserve it as open space. The landfill is bounded on the north and west by Evansburg State Park, on the east by a single original home and a new housing development (Valley High Estates) and on the south by the new housing development and undeveloped land. The Skippack Creek flows through Evansburg State Park and has, in the past, been stocked with trout.

Groundwater in the Site area occurs in an aquifer which has poor water yields. Most of the residents in the vicinity of the landfill are on public water; however, there are approximately ten residential wells along Moyer Road and Visitation Road, which are upgradient and east of the Site. There are no residential wells between the landfill and Skippack Creek.

The Moyer's Landfill property operated as a municipal landfill from the early 1940s until April 1981. The original unlined landfill area was approximately 39 acres in size. In the late 1970s, the landfill owners submitted a request to expand the landfill boundaries to the northwest. Site preparation work began on a new area in 1977, and included installation of an asphalt liner prior to filling. Landfilling was reportedly limited to this new, lined area from the late 1970s to early 1981, at which time an order from the Pennsylvania Department of Environmental Resources (PADER), now PADEP, closed the facility.

Originally, there was no management of leachate from the landfill and the discharge either seeped into groundwater or discharged directly to Skippack Creek. In the early 1970's PADER developed and implemented more comprehensive landfill regulations. As a result, a leachate collection system was constructed and began operating in 1972. However, leachate still overflowed continuously from several collection pits located on the property.

In 1981, PADEP closed the facility. The Moyer's Landfill became a Superfund Site when it was listed on the National Priorities List, (48 FR 40658) on September 8, 1983. The Remedial Investigation and Feasibility Study were performed by EPA and financed by the Fund.

Remedial Investigation and Feasibility Study (RI/FS)

In the early 1980s, on-site leachate and seep samples were collected and analyzed. The samples were contaminated with eighty-six (86) priority pollutants and sixteen (16) metals, nearly all contaminants of concern. The landfill surface showed a number of leachate and seep locations which served as a continuous source of pollution to ground and surface waters. There was no evidence of any detectable level of air pollution.

Surface water samples were taken from Skippack Creek and the Perkiomen Creek, and fish and sediment samples were taken from Skippack Creek. Contaminants were detected in low concentrations in both surface water, sediment, and fish. The contaminants were attributable to the landfill.

Off-site residential wells bordering the landfill were sampled for priority pollutants, metals, organics, PCBs, dioxins, and beta radiation. These wells did not show any detectable levels of organic or inorganic pollution. The residential groundwater met all EPA Drinking Water Standards at the time. Shallow monitoring wells installed around the periphery of the landfill showed concentrations of contaminants in the groundwater above risk-based numbers.

The groundwater contamination was mostly due to surface water percolation through the landfill and into the groundwater. The groundwater level is lower than the bottom of the landfill. Site contaminants were transported directly to the surface water bodies via surface water runoff and indirectly through contaminated groundwater (upper aquifer) discharged to the creeks. The deeper aquifer was not contaminated.

Selected Remedy

The Record of Decision (ROD) identified the following contaminants which were above acceptable levels in leachate and seep samples: Arsenic, barium, lead, manganese, nickel, zinc, beta radiation, trichloroethylene (TCE), toluene, xylene, di-n-octylphthalate, 2-hexanone, 2-butanone, bis (2-ethylhexyl) phthalate, and acetic acid.

The ROD for the Moyer's Landfill Site dates from before the Superfund Amendments and Reauthorization Act of 1986 (SARA) and states the Remedial Action Objectives in the following manner: ''The overall strategy is to mitigate and minimize harm to the public health and the environment. This should include minimizing further upper aquifer contamination and the possibility of direct contact with the waste. Leachate control is an integral part of the overall scheme in order to eliminate the continuing migration of contaminants across the Site and off the Site to the Skippack Creek.'' Because EPA is responsible for protecting human health and the environment, EPA has conducted remedial actions such as capping the landfill and collecting landfill leachate and routing it for treatment. These actions prevent direct contact with the waste and contaminated leachate and prevent off-site migration of contamination via surface runoff and groundwater movement.

The 1985 ROD identified a primary and a contingent remedy. The implementation of the primary remedy depended on the success of the gas generation/recovery program. Since the gas recovery system was not feasible due to diminishing gas generation, the contingency alternative was implemented. The major components of the contingency remedy included:

- Miscellaneous work preparatory to installation of the RCRA cap: Grading, flattening of steep slopes, retaining walls and installation of rip-rap at areas that are most likely to be eroded;
- Construction of the RCRA cap;
- Gas venting and gas monitoring;
- Surface water collection and discharge to Skippack Creek;
- Security/fencing measures;
- Leachate collection and on-site treatment that will meet the 10^{-6} risk level in the groundwater and discharge requirements in the stream; and
- Operation and Maintenance: Ground and surface water monitoring, maintenance of the cap and treatment of leachate on-site.

In January 2000, EPA issued an Explanation of Significant Differences (ESD) which modified the leachate treatment portion of the remedy. The ESD changed the leachate treatment portion of the remedial action from on-site leachate treatment to leachate collection with treatment at an existing Publicly Owned Treatment Works (POTW). This change better protected the surface waters and the environment from the potential failure of an undersized treatment plant. In addition, routing the leachate to the POTW was shown to be more cost effective than building and operating a leachate treatment facility.

In September 2009, EPA issued a second ESD to require Institutional Controls (ICs) as part of the remedy. ICs are non-engineered instruments, such as administrative and legal controls, that are necessary to protect the integrity of the remedial measures on-site to ensure long-term protection of human health and the environment. ICs play an important role in site remedies because they reduce exposure to contamination by limiting land or resource use and guiding human behavior at a site.

Response Actions

EPA executed an Interagency Agreement with the U.S. Army Corps of Engineers (USACE) for the design of the remedial action, which was completed on April 20, 1989. EPA executed another Interagency Agreement with the USACE for the construction of the remedial action. After USACE began construction, local residents expressed concerns regarding truck traffic. In response, EPA then directed USACE to redesign a partial cap (instead of a full cap) with a perimeter leachate collection trench. A partial cap meant that less fill was needed for construction, thus reducing the truck traffic. Less cover, however, also led to steeper slopes for the redesigned landfill cap. The redesign was completed in November 1992 and construction of the redesigned landfill cap was completed in November 1994. The Remedial Action Report for the landfill cap, Operable Unit 1 (OU1) was completed in December 1996.

EPA identified the leachate collection and treatment portion of the remedial action as Operable Unit 2 (OU2). In January 2000, EPA issued the first ESD which changed the leachate treatment portion of the remedial action from on-site leachate treatment to leachate collection with treatment at an existing POTW. The modified remedial action was considered infeasible at the time of the ROD because the sewer line was not available near the Site when the ROD was issued. The construction of the OU2 remedial action was initiated in 2000 and completed in August 2002. OU2 responsibility was divided as follows: (1) Montgomery County constructed the municipal interceptor, (2) EPA via USACE constructed the necessary leachate equalization tanks, and (3) PADEP was responsible for collecting and transferring the leachate to the equalization tanks and from the tanks to the municipal interceptor. The Remedial Action Report for the leachate collection and treatment at the POTW (OU2) was completed in April 2004.

EPA and PADEP conducted a final inspection of the entire Site on August 30, 2002 and determined that the remedy had been constructed in accordance with the Remedial Design plans and specifications and that no further response was anticipated for this Site. The Moyer's Landfill Superfund Site achieved construction completion

when the Preliminary Close-out Report was signed on September 17, 2002. Performance standards attained during the remediation were documented in the Remedial Action Completion Reports dated December 19, 1996 and April 4, 2004.

In October 2011, the Lower Providence Township approved an ordinance which serves as the IC for the Moyer's Landfill Site. The ordinance prohibits activities including, but not limited to, the following:

- Digging in or disturbance of the landfill cap, tampering with the hardware or equipment associated with the gas vents, monitoring wells, leachate collection and conveyance systems, or the security fencing.
- Any use of leachate generated at the Property including, without limitation, any activities that could cause exposure to contaminants in the leachate via ingestion, vapor inhalation or dermal contact.
- Digging in or disturbance of the landfill cap including, without limitation, any activities that could result in contact with contaminants in soils at the Property through ingestion, inhalation, or dermal contact.

Operation and Maintenance (O&M)

The USACE was responsible for maintenance of the landfill for the first eighteen months. A Site Maintenance Plan, dated January 1991, documented the expected activities to maintain and monitor the integrity of the Site, including monitoring the leachate, the groundwater in both the shallow and deep zones, and the gas vents on a quarterly basis, and visual inspections of the cap area and associated drainage/collection systems with corrective actions for identified problems. However, the plan stated that ''the number of monitoring locations, analytical parameters, and sampling frequencies may be modified during the maintenance period by PADER. . . .'' PADEP took responsibility for the landfill cap maintenance in May 1996. The responsibility for operation and maintenance (O&M) of the leachate storage and transfer system has always been with PADEP. EPA provided training on the system for PADEP and PADEP has been operating the system since start-up. The leachate currently is permitted by the Oaks POTW to meet their pretreatment program standards.

PADEP currently reports O&M status and issues to EPA. PADEP O&M consists of the following activities:

- *Site Inspections:* Once per month.
- *Leachate Collection Inspections:* Twice per month.
- *Leachate Monitoring:* Monthly reading of the leachate volume discharged to the POTW, and reporting information on total gallons per month and average daily flow rate to the POTW on a monthly basis, by the 15th of the month.
- *Grass cutting:* Twice per year. The landfill cap and surface water management features are inspected prior to each mowing.
- *Repairs of Cap, Perimeter Road, Fence:* As needed, as noted during site inspections.
- *Tree removal:* As needed, as noted during site inspections.
- *Sampling of groundwater and air monitoring/gas vent:* Every other year. Five monitoring wells, and the leachate sump in the South Valley are analyzed for volatile organics, TAL metals, and cyanide. The leachate may also be analyzed for other parameters requested by the POTW. Eight Summa canisters are deployed around the landfill (upwind and downwind) in order to record concentrations of volatile organic compounds. In addition, the Department also deploys up to six smaller, silica-lined Summa canisters to sample directly from active gas vents on the Site.

Five-Year Review

EPA has conducted two (2) Five-Year Reviews for this Site. Since the remedial action for Moyer's Landfill was selected before the Superfund Amendments and Reauthorization Act of 1986 (SARA) was enacted, EPA conducts these Five-Year Reviews as a matter of policy due to the fact that hazardous substances, pollutants, or contaminants remain at the Site above levels that allow for unlimited use and unrestricted exposure. These reviews are conducted pursuant to CERCLA Section 121(c), 42 U.S.C. 9621(c), and as provided in the current guidance on Five-Year Reviews.

The first Five-Year Review for the Site was completed on September 26, 2007, and the second Five-Year Review was completed on August 10, 2012. The next Five-Year Review for the Site is required by August 2017.

The second Five-Year Review for the Site found that the remedy has been constructed in accordance with the requirements of the ROD and is functioning as designed. The immediate threats have been addressed though capping the landfill and collecting and properly disposing of the leachate. Since the remedial actions at both Operable Units are protective, the Site is protective of human health and the environment. Long-term protectiveness of the remedy will be maintained by continuing to perform operation and maintenance of the landfill cap and leachate collection system; monitoring the groundwater and ambient air; and enforcing the institutional controls.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

EPA notified local officials about upcoming Five-Year Reviews and placed notices in the *Times Herald* to inform the public that the Five-Year Reviews were being conducted and when the findings of each would be available.

Determination That the Criteria for Deletion Have Been Met

No further response action under CERCLA is appropriate. EPA has determined based on the investigations conducted that all appropriate response actions required have been implemented at the Site. Through the second Five-Year Review, EPA has also determined that the remedy is considered protective of human health and the environment and, therefore, additional remedial measures are not necessary. Other procedures required by 40 CFR 300.425(e) are detailed in Section III of this direct Final Notice of Deletion.

V. Deletion Action

The EPA, with concurrence of the Commonwealth of Pennsylvania, through PADEP has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action noncontroversial and routine, EPA is taking it without prior publication. This action will be effective May 27, 2014 unless EPA receives adverse comments by April 28, 2014. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process, as appropriate, on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

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

Dated: February 27, 2014.

Shawn M. Garvin,

Regional Administrator, Environmental Protection Agency, Region 3.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

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

Appendix B to Part 300 [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry for ''PA'', ''Moyers Landfill'', ''Eagleville''.

[FR Doc. 2014–06811 Filed 3–26–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 11–42; DA 14–303]

Guidance to Eligible Telecommunications Carriers on the Process To Elect USAC To Perform Lifeline Recertification

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) provides guidance regarding the process for eligible telecommunications carriers (ETCs) to elect the Universal Service Administrative Company (USAC) to perform Lifeline recertification for their subscribers in 2014.

DATES: Effective March 27, 2014.

FOR FURTHER INFORMATION CONTACT: Jonathan Lechter, Wireline Competition Bureau, (202) 418–7387 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document in WC Docket No. 11–42; DA 14–303, released March 5, 2014. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov/document/guidance-etcs-regarding-2014-usac-lifeline-recertification-process.*

1. In the 2012 *Lifeline Reform Order,* 77 FR 12784, March 2, 2012, the Commission required ETCs to recertify the eligibility of ETCs' base of subscribers ''annually.'' Starting in 2013, ETCs had the option of having USAC conduct the annual recertification process on their behalf. The Commission delegated to the Bureau the authority to establish, in coordination with USAC, a process for USAC to recertify subscribers. This process for 2013 was described in detail in the *2013 Recert Notice,* 78 FR 35632, June 13, 2013, and, as explained below, remains largely the same for 2014.

2. ETCs must provide notice to USAC by April 1, 2014 if they intend to have USAC perform the recertification process on their behalf for 2014. Any ETC that used USAC to perform recertification in 2013 will be presumed to elect USAC to perform recertification in 2014 unless the carrier notifies USAC otherwise by April 1, 2014. ETCs that did not elect to use USAC last year and that do not make an election by April 1, 2014 will be responsible for conducting recertification of their subscribers.

3. ETCs should perform their election or revocation by sending an email to USAC at *LiVerifications@usac.org.* USAC will provide guidance to ETCs regarding format of the information in the email.

4. Consistent with the process in 2013, USAC will recertify subscribers by mailing each subscriber a letter that provides the subscriber the notice required by § 54.405(e)(4) of the Commission's rules, informing the subscriber that the subscriber has 30 days to recertify the subscriber's continued eligibility to receive Lifeline service or the subscriber will be de-enrolled from the Lifeline program. The letter will also explain the recertification process and how the subscriber may confirm his or her eligibility. Subscribers will also receive a call or text message during the 30-day period to prompt a response. Any subscriber response submitted after the 30-day deadline will not be processed, and the subscriber will be considered ineligible for the program and will be de-enrolled.

5. USAC will provide subscribers with three methods to respond to the letter and recertify their eligibility. First, USAC will accept consumer calls made to a toll-free number, during which consumers will be able to recertify eligibility through an Inter-Active Voice Response (IVR). Second, USAC will allow consumers to verify their identity, read the certification language, and submit a response indicating they are recertifying their eligibility through a Web site maintained by USAC. Third, subscribers may also recertify by signing a recertification form provided by USAC and mailing the signed form to a receiving address designated by USAC.

6. ETCs that elect to have USAC recertify their Lifeline subscribers must provide USAC with their subscriber list by May 1, 2014. Consistent with the Commission's recertification requirements, the subscriber list must be based on the ETC's February 2014 FCC Form 497 and must be sent to USAC in a standardized format as instructed by USAC. To the extent that a state agency conducts recertification for all or a portion of an ETC's subscribers, the ETC may not elect to utilize USAC for recertifying those subscribers subject to recertification by the state agency. Therefore, prior to transmittal to USAC, the ETC should remove from its subscriber list those subscribers that are subject to the state agency's recertification process. Each ETC that elects USAC to perform the recertification process will provide a toll-free number that USAC can provide to the ETC's consumers who have questions about their service.

7. USAC will complete the recertification process over a series of months, by grouping the ETCs that elect to have USAC complete the process into phases so that the influx of responses can be staggered. This grouping will be done randomly and staggered based upon USAC capacity.

8. USAC will compile the responses and provide each ETC with a record of the subscriber recertification. USAC will provide each ETC with a list of subscribers that did not recertify, and therefore must be de-enrolled, and provide ETCs with sufficient information to compile their FCC Form 555 at least 30 days before the annual January 31 due date. ETCs must de-enroll subscribers within five days of receiving notice from USAC that the

subscriber has failed to recertify. As noted above, all active subscribers enrolled in Lifeline prior to 2014 and for which the ETC sought reimbursement on its February 2014 FCC Form 497 are subject to recertification in 2014.

9. The Bureau concludes that good cause exists to make the procedures established in this document effective immediately (March 27, 2014), pursuant to section 553(d)(3) of the Administrative Procedure Act. The Bureau also finds good cause based on the need for these procedures to be in place and available to ETCs in time for ETCs to be able to submit their elections to USAC, and provide USAC with a subscriber list in time to comply with the procedures adopted here.

10. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it 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, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Federal Communications Commission.

Kimberly A. Scardino,

Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2014–06732 Filed 3–26–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130108020–3409–01]

RIN 0648–XD198

Fisheries Off West Coast States; Modifications of the West Coast Commercial Salmon Fisheries; Inseason Actions #1, #2, and #3

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

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NOAA Fisheries announces three inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial salmon fisheries in the area from Cape Falcon, Oregon to Point Arena, California.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions. Comments will be accepted through April 11, 2014.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2012–0248, 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-NMFS-2012-0248,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–6349.
- Fax: 206–526–6736, Attn: Peggy Mundy.

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

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION:

Background

In the 2013 annual management measures for ocean salmon fisheries (78 FR 25865, May 3, 2013), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2013, and 2014 salmon seasons opening earlier than May 1, 2014. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is generally divided into two geographic areas: north of Cape Falcon (U.S./Canada Border to Cape Falcon, Oregon) and south of Cape Falcon (Cape Falcon, Oregon to the U.S./Mexico Border). The inseason actions reported in this document affect fisheries south of Cape Falcon.

Inseason Actions

Inseason Action #1

Inseason action #1 adjusted the scheduled opening date for commercial salmon fisheries from Cape Falcon, Oregon, to Humbug Mountain, Oregon, and from Humbug Mountain, Oregon, to the Oregon/California Border. These fisheries, previously scheduled to open March 15, 2014, now open April 1, 2014.

The Regional Administrator (RA) consulted with representatives of the Council, Oregon Department of Fish and Wildlife (ODFW), and California Department of Fish and Wildlife (CDFW) on March 11, 2014. The information considered during this consultation related to projected abundance of Chinook salmon stocks for the 2014 salmon fishing season. During the consultation, the states recommended adjusting the opening date for this fishery in order to conserve impacts on age-4 Klamath River fall Chinook salmon (KRFC); the RA concurred. KRFC is the constraining stock for Klamath Management Zone (KMZ) fisheries to meet annual catch limits (ACLs) and is used as a surrogate for impacts to Endangered Species Act (ESA) listed California coastal Chinook salmon. Inseason action #1 took effect on March 15, 2014 and remains in effect until May 1, 2014. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #2

Inseason action #2 cancelled the previously scheduled April 16–30, 2014, commercial salmon fishery from Horse Mountain, California to Point Arena, California.

The RA consulted with representatives of the Council, ODFW, and CDFW on March 11, 2014. The information considered during this consultation related to projected abundance of Chinook salmon stocks for the 2014 salmon fishing season. During the consultation, the states recommended cancelling this commercial fishery in order to conserve impacts on age-4 Klamath River fall Chinook salmon (KRFC); the RA

concurred. KRFC is the constraining stock for KMZ fisheries to meet ACLs and is used as a surrogate for impacts to ESA-listed California coastal Chinook salmon. Inseason action #2 takes effect on April 16, 2014, and remains in effect until May 1, 2014. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #3

Inseason action #3 adjusted the landing limits for halibut caught incidental to the April 2014 commercial salmon fishery. International Pacific Halibut Commission license holders participating in the April 2014 commercial salmon fishery may land or possess no more than one Pacific halibut per each four Chinook, except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 12 halibut may be possessed or landed per trip.

The RA consulted with representatives of the Council, ODFW, and CDFW on March 11, 2014. The information considered during this consultation related to the 2014 Pacific halibut allocation provided to the commercial salmon fishery under the 2014 Pacific Halibut Catch Sharing Plan for the U.S. West Coast (Area 2A); this allocation is reduced from 2013. During the consultation, the states recommended reducing both the halibut trip limit and the landing ratio of halibut to Chinook salmon to conserve the reduced allocation; the RA concurred. Inseason action #3 takes effect on April 1, 2014, and remains in effect until May 1, 2014. Inseason action to modify retention regulations is authorized by 50 CFR 660.409(b)(1)(ii).

All other restrictions and regulations remain in effect as announced for the 2013 ocean salmon fisheries and 2014 fisheries opening prior to May 1, 2014 (78 FR 25865, May 3, 2013).

The RA determined that the best available information indicated that projected abundance of Chinook salmon and availability of Pacific halibut supported the above inseason actions recommended by the states of Oregon and California. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (78 FR 25865, May 3, 2013), the West Coast Salmon Fishery Management Plan (Salmon FMP), and regulations implementing the Salmon FMP, 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook salmon abundance projections and Pacific halibut allocations were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, thus allowing fishers access to the available fish at the time the fish were available while ensuring that quotas are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon FMP and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: March 24, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–06821 Filed 3–24–14; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 59
Thursday, March 27, 2014

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

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 120809321–3716–02]

RIN 0648–BC26

Gulf of the Farallones and Monterey Bay National Marine Sanctuaries Regulations on Introduced Species

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Amendment to proposed rule; request for comments.

SUMMARY: On March 18, 2013 (78 FR 16622), NOAA proposed to prohibit the introduction of introduced species into the state waters of Gulf of the Farallones and Monterey Bay national marine sanctuaries (GFNMS and MBNMS, respectively). The proposed prohibition included exceptions for the catch and release of striped bass and for introduced species as part of mariculture activities in the Tomales Bay region of GFNMS (the only geographic area within sanctuaries offshore of California where mariculture occurs). NOAA is now amending the March 2013 proposed rule to allow GFNMS and MBNMS to authorize certain introduced species of shellfish from commercial mariculture projects in all state waters of the sanctuaries.

DATES: Comments on this proposed rule will be accepted on or before April 11, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NOS–2012–0113, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NOS-2012-0113, click the ''Comment Now!'' icon, complete the required fields and enter or attach your comments.*
- *Mail:* Dave Lott, Regional Operations Coordinator, West Coast Region, Office of National Marine Sanctuaries, 99 Pacific Street, STE100F, Monterey, CA 93940.

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

You may obtain copies of the original final environmental impact statement, record of decision, or other related documents through the following Web site: *http://sanctuaries.noaa.gov/jointplan.*

FOR FURTHER INFORMATION CONTACT: Dave Lott, Regional Operations Coordinator, West Coast Region, Office of National Marine Sanctuaries, 99 Pacific Street, STE 100F, Monterey, CA 93940. (831) 647–1920.

SUPPLEMENTARY INFORMATION:

I. Background

On November 20, 2008, NOAA issued a final rule associated with the Joint Management Plan Review (JMPR) of GFNMS, MBNMS, and Cordell Bank NMS (73 FR 70488). Among other things, the rule prohibited the introduction of introduced species within or into both the federal and state waters of GFNMS and MBNMS, except for the catch and release of striped bass in both sanctuaries and from existing commercial mariculture activities within the Tomales Bay region of GFNMS. In December 2008, the then-Governor of California, acting pursuant to the National Marine Sanctuaries Act, objected to these introduced species regulations for the state waters portions of GFNMS and MBNMS. As a result of that objection, NOAA's prohibitions on introduced species are limited to the federal waters of MBNMS and GFNMS.

On March 18, 2013, following discussions with the State of California, NOAA re-proposed the prohibition on the introduction of introduced species within or into the state waters of GFNMS and MBNMS to provide regulatory consistency across the four national marine sanctuaries offshore California (78 FR 16622). The proposal would maintain exceptions for the catch and release of striped bass and for state-permitted commercial mariculture activities in Tomales Bay. A 60-day comment period on the proposed rule closed on May 17, 2013. (**Note:** MBNMS regulations use the term ''aquaculture'' and GFNMS regulations use the term ''mariculture'' to refer to the same activity; accordingly, both of these terms are used in this notice of amended proposed rulemaking.)

NOAA received comments from both the California Department of Fish and Wildlife (CDFW) and aquaculture industry raising concerns that ONMS's broad definition of ''introduced species'' does not recognize that a number of introduced species of shellfish have been cultivated for over 100 years within sanctuary waters of Tomales Bay without adverse impacts to native resources. The Final Environmental Impact Statement for the 2008 Joint Management Plan Review recognized that non-native oyster species cultivated in Tomales Bay had not spread outside the mariculture areas. Both the CDFW and aquaculture industry also commented that the proposed regulation did not allow NOAA to consider potential future permit requests from the industry for cultivation of such species. The state believed that if NOAA exercised the authority to permit such operations, in close cooperation and collaboration with state resource management agencies—CDFW, California Fish and Game Commission (CFGC), and California Coastal Commission (CCC)—this would allow aquaculture operators and the state to demonstrate that expanding existing or developing new shellfish aquaculture operations involving introduced species

of shellfish that are non-invasive would not harm sanctuary resources. Both CDFW and the aquaculture industry also expressed the view that this approach would be more consistent with Executive Order 13112 on the management of introduced species.

Through this amended notice of proposed rulemaking, NOAA is proposing to allow MBNMS and GFNMS to authorize state permits or leases for commercial mariculture projects in state waters involving introduced species of shellfish that the state management agencies and NOAA have determined are non-invasive and would not have significant adverse impacts to sanctuary resources or qualities. State agencies agree with NOAA that introduced species should be managed uniformly throughout the two sanctuaries.

Currently, the introduction of introduced species is prohibited in the federal waters of GFNMS. As amended, this proposed rule would extend the prohibition into the state waters of the sanctuary, including Tomales Bay. However, existing State-permitted commercial mariculture operations in Tomales Bay would not be subject to this regulation unless they seek a modification (e.g., changes to the species of cultivated shellfish or new areas for cultivation). For a new introduced species aquaculture operation, any such proposal after the effective date of these regulations would require a sanctuary authorization. Therefore, all existing commercial mariculture operations in Tomales Bay that have a valid lease or permit from the State as of May 1, 2014, would remain exempt from the prohibition on the introduction of introduced species and would not require a sanctuary authorization. However, a state permit, license or other authorization issued after May 1, 2014, to expand or otherwise modify an existing operation in Tomales Bay would need to be authorized by NOAA.

The Final EIS for the 2008 JMPR analyzed the effects of prohibiting the introduction of introduced species in the sanctuaries, including exempting the twelve state leases for commercial mariculture activities in Tomales Bay that were active at that time. The FEIS further stated that renewals of the state leases that did not increase the types of introduced species being cultivated or expand the area under cultivation would remain exempt. However, any new lease agreements would be subject to the prohibition. Therefore, the changes in this amended proposed rule do not change the environmental impact analysis as was described in the Final EIS—no increase in the environmental impact from introduced shellfish species under cultivation. Requests for authorizations from NOAA to modify existing operations would be reviewed for environmental impacts on a case-by-case basis. The regulations defining the ONMS authorization authority are found at 15 CFR 922.49.

NOAA would enter into a MOA with the State of California to define the role of various state agencies—CDFW, CFGC, CCC—working in collaboration with ONMS to consider whether an introduced species of shellfish could be considered non-invasive and possibly allowed to be cultivated in the sanctuary via an ONMS authorization of a state lease. State agencies would take the lead in determining whether an introduced species of shellfish is non-invasive but would consult with NOAA early in the process to ultimately reach a joint decision.

This proposed, limited authorization authority for commercial, shellfish mariculture activities occurring in state waters of GFNMS, in combination with the MOA with the State of California, would formalize the consultation requirements for any new or amended permit decision in state waters of GFNMS. This would provide significant protection to GFNMS from introduced species of shellfish while minimizing economic impacts to local mariculture businesses.

NOAA's proposed rule as published on March 18, 2013 (78 FR 16622), would have exempted all mariculture projects in Tomales Bay, yet would have involved extensive consultation between state agencies and NOAA through the MOA to address new or expanded projects in Tomales Bay. As now proposed here, NOAA authorizations would also include the same consultative process, and would impose little to no additional permitting delays following State action to approve leases and permits. ONMS regulations, along with the MOA, would describe a process for administrative appeals of any ONMS permit decision.

IV. Summary of the Revisions to GFNMS Regulations

This rule would provide GFNMS the ability to consider and authorize new or amended existing operations of commercial mariculture activities in state waters involving certain introduced species of shellfish that are determined to be non-invasive, including in Tomales Bay. Existing regulations regarding sanctuary authorization authority at § 922.49 would be modified to include subpart H for GFNMS-specific regulations. NOAA would also modify the exemption at § 922.82 to specify that commercial cultivation of introduced species of shellfish in Tomales Bay conducted pursuant to state leases in effect on May 1, 2014, would remain exempt from the prohibition. In § 922.82, NOAA would also add a subparagraph (d) that specifies that GFNMS could authorize the introduction of introduced species of shellfish that have been determined by the State of California and NOAA to be non-invasive and would not cause significant adverse effects on sanctuary resources or qualities. NOAA is seeking comment on whether such authority should be included in GFNMS regulations should an acceptable project in state waters be proposed in the future involving commercial aquaculture of introduced shellfish species that are non-invasive.

V. Summary of the Revisions to MBNMS Regulations

For the same reasons, MBNMS regulations would be modified to allow authorization of a valid permit, license or other authorization issued by the State of California for commercial shellfish aquaculture activities conducted in state waters of MBNMS involving introduced species of shellfish that NOAA and the State have determined to be non-invasive and would not cause significant adverse effects on sanctuary resources or qualities. MBNMS regulations already allow State of California permits to be authorized for certain activities that are otherwise prohibited in the sanctuary. This proposed rule would allow the Director to authorize state permits involving the introduction of an introduced species as described above. NOAA is specifically seeking comment on whether such authority should be included in MBNMS regulations if a commercial aquaculture project is proposed in state waters of the sanctuary involving introduced shellfish species that are non-invasive.

VI. Miscellaneous Rulemaking Requirements

A. National Marine Sanctuaries Act

Section 301 of the NMSA (16 U.S.C. 1434) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA requires the preparation of a draft environmental impact statement (DEIS), as provided by the National

Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and that the DEIS be made available to the public. NOAA prepared a draft and final management plan and a draft and final EIS on the initial proposal and final rule for the Joint Management Plan Review (JMPR). Copies are available at the address and Web site listed in the Address section of this proposed rule. Responses to comments received on March 18, 2013 proposed rule and on this proposed revision to the regulations will be published in the preamble to the final rule and discussed in the record of decision. NOAA has made available the 2008 final environmental impact statement (FEIS) for the JMPR that was previously available to the public and which analyzes the environmental effects of the introduced species regulations as they are now proposed in this action.

B. National Environmental Policy Act

In the 2008 FEIS for the JMPR, NOAA identified a preferred action which was to modify the terms of designation and regulations for GFNMS and MBNMS to, among other things, prohibit the introduction of introduced species (with limited exceptions) throughout the sanctuaries, and NOAA endorses that action as re-proposed and as amended in this notice of proposed rulemaking. NOAA continues to propose regulations that would not affect existing mariculture projects in Tomales Bay that are conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California as of May 1, 2014. Pursuant to a memorandum of agreement that would be executed, the state would consult with NOAA prior to any new or amended state-issued lease and permits. In addition, through this action NOAA would exercise limited authorization authority with respect to commercial mariculture activities in state waters of the sanctuary involving cultivation of introduced species of shellfish that NOAA and the State have determined are non-invasive and would not cause significant adverse effects. NOAA believes this is within the range of alternatives considered in the FEIS, and because there has not been a significant change to the environmental conditions or the potential environmental effects of the preferred alternative, NOAA has determined that a supplement to the FEIS is not required for this proposed action. Finally, any future proposal or amendments to existing state leases for a mariculture project involving cultivation of non-invasive introduced shellfish species would undergo environmental review pursuant to NEPA on a case-by-case basis to consider project-specific effects of that action. NOAA may refuse to authorize a project that would not comply with terms or conditions required by NOAA. 15 CFR 922.49(a).

Copies of the FEIS and other related materials that are specific to this action are available at *http://sanctuaries.noaa.gov/jointplan/feis/feis.html,* or by contacting NOAA at the address listed in the Addresses section of this proposed rule. Comments regarding the introduction of introduced species portion of the original FEIS are reopened for comment.

C. Executive Order 12866: Regulatory Impact

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

D. Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action falls within the definition of ''policies that have federalism implications'' within the meaning of Executive Order 13132. NOAA's previous proposed rule and subsequent withdrawal were conducted in cooperation with the State of California, and pursuant to Section 304(b) of the NMSA. Since the proposed rule was issued on March 18, 2013, further consultations have occurred with the State of California, and the proposed changes contained in this notice reflect cooperative negotiations reached in those consultations. It is NOAA's view that, due to these negotiations, the state will not object to the amended changes in this action. In keeping with the intent of the Executive Order, NOAA consulted with a number of entities within the state which participated in development of the initial rule, including but not limited to, the California Coastal Commission, the California Department of Fish and Wildlife, and the California Natural Resources Agency.

E. 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 this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was discussed in the proposed rule issued on March 18, 2013, and while the proposal has changed, the conclusion remains the same (78 FR 16622). The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

Using the SBA's Small Business Size Standards, NOAA determined that the small business concerns operating within both of the sanctuaries include: Commercial fishermen who vary in number seasonally and annually from approximately 300 to 500 boats; twelve mariculture leaseholders in Tomales Bay (in GFNMS); approximately 25 recreational charter fishing businesses; and approximately seven recreational charter businesses engaged in wildlife viewing. The small organizations, as defined under 5 U.S.C. 601(4), that would be impacted by this rule include approximately three small organizations operating within the waters of GFNMS, which include nongovernmental organizations (NGOs) or non-profit organizations (NPOs) dedicated to environmental education, research, restoration, and conservation concerning marine and maritime heritage resources. The small governmental jurisdictions, as defined under 5 U.S.C. 601(5), that would be impacted by this rule are the Tomales Bay settlements that are directly adjacent to GFNMS.

The prohibition on releasing or otherwise introducing from within or into GFNMS and MBNMS an introduced species is not expected to significantly adversely impact small entities because this activity is generally not part of their business or operational practices. As NOAA analyzed in more detail in 2008, small entities whose operational practices may include catch and release of striped bass (*Morone saxatilis*) (i.e., consumptive recreational charter businesses), would not be affected because the prohibition would not apply to the catch and release of this fish species already present in the sanctuaries. In fact, the prohibition against introduced species may result in indirect benefits for certain small entities since their activities could potentially be negatively impacted by the spread of introduced species, which can severely affect populations of endangered species, native species diversity, and the composition and resilience of natural biological communities. Introduced species pose a major economic and environmental threat to the living resources and habitats of a sanctuary as well as the commercial and recreational uses that depend on these resources. Preventing their introduction will therefore help

small entities by preventing such detrimental impacts.

The proposed prohibition will not impact aquaculture leaseholders located adjacent to GFNMS. Existing leaseholders operating in Tomales Bay are excepted from the introduced species prohibition if they have active lease agreements from the State of California for commercial cultivation of introduced species of shellfish in Tomales Bay and in effect as of May 1, 2014. Under the revisions as described in this proposed rule, additional permits could be authorized for the introduction of introduced species of shellfish that have been determined by the State of California and NOAA to be non-invasive and that would not cause significant adverse effects on sanctuary resources or qualities. Pursuant to a memorandum of agreement, the State of California would consult with NOAA prior to issuing any new leases or permits for commercial cultivation of introduced species of shellfish in Tomales Bay. This prohibition would not put any current operations out of business, because they would not need to change anything about their current procedures to continue in their operations, if their leases are in effect on May 1, 2014.

Comments received on the economic impacts of this proposed rule will be summarized and responded to in the final rule. As a result of this assessment, a regulatory flexibility analysis was not required and none was prepared.

F. Paperwork Reduction Act

This proposed rule does not contain information collections that are subject to the requirements of the Paperwork Reduction Act. 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.

VII. Request for Comments

NOAA requests comments on this proposed rule, which amends the currently pending proposed rule published on March 18, 2013 (78 FR 16622). NOAA re-opens the docket NOAA–NOS–2012–0113 for comment for fifteen (15) days after publication of this notice.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Aquaculture, Catch and release, Environmental protection, Fish, Harbors, Introduced species, Mariculture, Marine pollution, Marine resources, Natural resources, Non-invasive, Penalties, Recreation and recreation areas, Research, Water pollution control, Water resources, Wildlife.

Dated: March 19, 2014.

Holly A. Bamford,

Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922—[AMENDED]

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 et seq.

■ 2. In § 922.49, revise the introductory text of paragraph (a), and paragraphs (b) and (c) to read as follows:

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by: subpart H; subparts L through P; or subpart R, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P, provided that:

* * * * *

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by subpart H as appropriate, or subparts L through P, or subpart R, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of National Marine Sanctuaries at the address specified in subpart H as appropriate, or subparts L through P, or subpart R, as appropriate. A copy of the application must accompany the notification.

* * * * *

■ 3. In § 922.50, revise paragraph (a)(1) to read as follows:

§ 922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit issued pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under § 922.47; or, for those Sanctuaries described in subpart H, subparts L through P, and subpart R, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator.

* * * * *

■ 3a. In § 922.82, revise paragraph (a)(10) to read as follows:

§ 922.82 Prohibited or otherwise regulated activities.

(a) * * *

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except:

(i) Striped bass (*Morone saxatilis*) released during catch and release fishing activity; or

(ii) Introduced species of shellfish cultivated by commercial mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization in effect on May 1, 2014 issued by the State of California.

* * * * *

■ 4. In § 922.82 add paragraph (d) to read as follows:

§ 922.82 Prohibited or otherwise regulated activities.

* * * * *

(d) The prohibition in paragraph (a)(10) of this section does not apply to the introduction of any introduced species of shellfish that does not cause significant adverse effects to sanctuary resources or qualities and is non-invasive as determined by NOAA and the State of California, and is cultivated in state waters as part of commercial shellfish mariculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California provided that the applicant complies with 15 CFR 922.49, 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 necessary to protect Sanctuary resources and qualities. Amendments, renewals, and extensions of State leases or permits in existence on May 1, 2014 require an authorization that must comply with this paragraph.

* * * * *

■ 5. Revise paragraph (e) of § 922.132 to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

* * * * *

(e) The prohibitions in paragraphs (a)(2) through (a)(8) of this section, and (a)(12) of this section regarding any introduced species of shellfish that does not cause significant adverse effects to sanctuary resources or qualities and is non-invasive as determined by NOAA and the State of California, and that is cultivated in state waters as part of commercial shellfish aquaculture activities, do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation (January 1, 1993) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with 15 CFR 922.49, 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 necessary to protect Sanctuary resources and qualities. Amendments, renewals, and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

[FR Doc. 2014–06504 Filed 3–26–14; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM13–19–000, RM14–3–000]

Generator Relay Loadability and Revised Transmission Relay Loadability Reliability Standards

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Commission proposes to approve a new Reliability Standard, PRC–025–1 (Generator Relay Loadability), submitted by the North American Electric Reliability Corporation (NERC), the Commission-approved Electric Reliability Organization. In addition, the Commission proposes to approve Reliability Standard PRC–023–3 (Transmission Relay Loadability), also submitted by NERC, which revises a currently-effective standard pertaining to transmission relay loadability.

DATES: Comments are due April 28, 2014.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Syed Ahmad (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8718, *syed.ahmad@ferc.gov.*

Julie Greenisen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6362, *julie.greenisen@ferc.gov.*

SUPPLEMENTARY INFORMATION:

146 FERC ¶ 61,189

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

(Issued March 20, 2014)

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve a new Reliability Standard, PRC–025–1 (Generator Relay Loadability), submitted by the North American Electric Reliability Corporation (NERC). In addition, the Commission proposes to approve Reliability Standard PRC–023–3 (Transmission Relay Loadability), also submitted by NERC, which revises a currently-effective standard pertaining to transmission relay loadability.

2. NERC developed proposed Reliability Standard PRC–025–1 in response to certain Commission directives issued in Order No. 733,[2] in which the Commission approved an initial version of a Reliability Standard governing transmission relay loadability. We believe that the proposed new standard on generator relay loadability, Reliability Standard PRC–025–1, will serve to enhance reliability by imposing mandatory requirements governing generator relay loadability, thereby reducing the likelihood of premature or unnecessary tripping of generators during system disturbances. In addition, we believe that the proposed revisions to PRC–023–2 are appropriate in that they clarify the applicability of the two standards governing relay loadability (PRC–025–1 and PRC–023–3), and prevent potential compliance overlap due to inconsistencies. Finally, we propose to approve the violation risk factors and violation severity levels as proposed for PRC–025–1, as well as the proposed implementation plans for the two standards.

I. Background

A. Regulatory Background

3. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[3] Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or by the Commission independently.[4] In 2006, the Commission certified NERC as the ERO pursuant to FPA section 215.[5]

B. Relay Protection Systems

4. Protective relays are devices that detect and initiate the removal of faults on an electric system.[6] They are designed to read electrical measurements, such as current, voltage, and frequency, and can be set to recognize certain measurements as indicating a fault. When a protective relay detects a fault on an element of the system under its protection, it sends a signal to an interrupting device, such as a circuit breaker, to disconnect the element from the rest of the system. Impedance relays, which are the most common type of relays used to protect transmission lines, continuously measure voltage and current on the protected transmission line and operate when the measured magnitude and

[1] 16 U.S.C. 824o (2012).

[2] *Transmission Relay Loadability Reliability Standard,* Order No. 733, 130 FERC ¶ 61,221 (2010) (Order No. 733); *order on reh'g and clarification,* Order No. 733–A, 134 FERC ¶ 61,127; *clarified,* Order No. 733–B, 136 FERC ¶ 61,185 (2011).

[3] 16 U.S.C. 824o(c) and (d).

[4] *See id.* at 824o(e).

[5] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom., Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[6] A ''fault'' is defined in the NERC Glossary of Terms used in Reliability Standards as ''[a]n event occurring on an electric system such as a short circuit, a broken wire, or an intermittent connection.''

phase angle of the impedance (voltage/current) falls within the settings of the relay.

C. Development of Reliability Standards on Relay Loadability

5. Following the August 2003 blackout that affected parts of the Midwest, the Northeast, and Ontario, Canada, NERC and the U.S.-Canada Power System Outage Task Force (Task Force) concluded that a substantial number of transmission lines disconnected during the blackout when load-responsive phase-protection backup distance and phase relays operated unnecessarily, i.e. under non-fault conditions. Although these relays operated according to their settings, the Task Force determined that the operation of these relays for non-fault conditions contributed to cascading outages at the start of the blackout and accelerated the geographic spread of the cascade.[7] Seeking to prevent or minimize the scope of future blackouts, both NERC and the Task Force developed recommendations to ensure that these types of protective relays do not contribute to future blackouts.[8]

6. NERC developed Reliability Standard PRC–023–1 (Transmission Relay Loadability) to address these recommendations, and submitted it for Commission approval under FPA section 215. On March 10, 2010, in Order No. 733, the Commission approved Reliability Standard PRC–023–1.[9] In addition, the Commission directed NERC to (1) make certain modifications to the Reliability Standard, (2) submit a timeline for the development of a new Reliability Standard to address generator protective relay loadability, and (3) develop a new Reliability Standard addressing the issue of protective relay operation during stable power swings.

D. NERC Petition and Proposed Standards PRC–025–1 and PRC–023–3

1. Proposed Reliability Standard PRC–025–1

7. On September 30, 2013, NERC submitted a petition seeking approval of Reliability Standard PRC–025–1 (Generator Relay Loadability).[10] NERC states in its petition that the proposed standard ''is designed to prevent generator tripping when conditions do not pose a direct risk to the generator and associated equipment and will reduce the risk of unnecessary generator tripping—events that increase the severity of the disturbance.'' [11] NERC further states that the proposed standard is intended to address the second part of the Commission's Order No. 733 directives, requiring development of a standard governing generator protective relay loadability.[12] NERC notes that it addressed the first Order No. 733 directive, requiring modification of PRC–023–1, through its revised standard PRC–023–2 (currently in effect).[13] NERC indicates that it is addressing the third portion of the Order No. 733 directives, relay operation during stable power swings, as part of a separate phase of the project.[14]

8. The stated purpose of PRC–025–1 is ''[t]o set load-responsive protective relays associated with generation Facilities at a level to prevent unnecessary tripping of generators during a system disturbance for conditions that do not pose a risk of damage to the associated equipment.'' [15] Proposed Reliability Standard PRC–025–1 would apply to any generator owner, transmission owner, or distribution provider ''that applies load-responsive protective relays at the terminals of the Elements listed in 3.2, Facilities.'' [16] ''Facilities,'' in turn, are defined in section 3.2 of the proposed standard as:

> Elements associated with Bulk Electric System (BES) generating units and generating plants, including those * * * identified as Blackstart Resources in the Transmission Operator's system restoration plan:
>
> 3.2.1 Generating unit(s).
>
> 3.2.2 Generator step-up (i.e., GSU) transformer(s).
>
> 3.2.3 Unit auxiliary transformer(s) (UAT) that supply overall auxiliary power necessary to keep generating unit(s) online.
>
> 3.2.4 Elements that connect the GSU transformer(s) to the Transmission system that are used exclusively to export energy directly from a BES generating unit or generating plant. Elements may also supply generating plant loads.
>
> 3.2.5 Elements utilized in the aggregation of dispersed power producing resources.

9. Proposed Reliability Standard PRC–025–1 has only one requirement, that each applicable entity ''shall apply settings that are in accordance with PRC–025–1—Attachment 1: Relay Settings, on each load-responsive protective relay while maintaining reliable fault protection.'' [17] The relay setting options are defined in Table 1 of Attachment 1, and include the specific bus voltage and other inputs to be used depending on the application (e.g., synchronous or asynchronous generator, generator step-up transformer, or unit auxiliary transformer) and the type of relay. For most applications of each type of relay, the proposed standard would give applicable entities the option of adopting relay settings that meet the stated criteria as determined through (1) a relatively simple calculation, (2) a more complex calculation, or (3) a described simulation. As stated in the standard, the criteria in Attachment 1 ''represent short-duration conditions during which generation Facilities are capable of providing system reactive resources, and for which generation Facilities have been historically recorded to disconnect, causing events to become more severe.'' [18]

10. NERC further explains in its petition that the specific relay setting criteria are based on system conditions observed during the August 2003 Blackout.[19] The criteria for relays applied on synchronous generators, and

[7] U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations, at 80 (2004) (Final Blackout Report).

[8] *See* Final Blackout Report, Recommendation 21A; North American Electric Reliability Council, August 14, 2003 Blackout: NERC Actions to Prevent and Mitigate the Impacts of Future Cascading Blackouts, at 13 and Recommendation 8a (2004).

[9] Order No. 733, 130 FERC ¶ 61,221.

[10] Proposed Reliability Standards PRC–025–1 and PRC–023–3 are not attached to this Notice of Proposed Rulemaking. The complete texts of these proposed Reliability Standards are available on the Commission's eLibrary document retrieval system in Docket Nos. RM13–19–000 and RM14–3–000, and are posted on NERC's Web site, *available at: http://www.nerc.com.*

[11] *Petition of the North American Electric Reliability Corp. for Approval of Proposed Reliability Standard PRC–025–1 (Generator Relay Loadability),* Docket No. RM13–19–000, at 4 (Sept. 30, 2013) (Sept. 30 Petition or Petition). NERC requested that the Commission delay its consideration of PRC–025–1 until NERC could finalize and submit for approval certain related revisions to its transmission relay loadability standard, PRC–023–2. Those revisions were submitted on Dec. 17, 2013, as discussed further below.

[12] *See id.* at 8.

[13] *Id.* (citing *Transmission Relay Loadability Reliability Standard,* Order No. 759, 138 FERC ¶ 61,197 (2012)).

[14] *Id.* NERC indicated that this third phase of its response to Order No. 733 is tentatively scheduled to be completed in December 2014. *Id.*

[15] Sept. 30 Petition, Ex. A at 3. While NERC has not proposed a definition for the term ''load-responsive protective relays,'' Attachment A of existing Reliability Standard PRC–023–2, which also uses the term ''load-responsive protective relays'' states that the standard includes ''any protective functions which could trip with or without time delay, on load current.'' NERC Reliability Standard PRC–023–2, *available at http://www.nerc.com/_layouts/PrintStandard.aspx?standardnumber=PRC-023-2&title=Transmission%20Relay%20Loadability&jurisdiction=United%20States.*

[16] Sept. 30 Petition, Ex. A at 3. NERC further explains that the standard should ''include all load-responsive protective relays that are affected by increased generator output in response to system disturbances.'' Sept. 30 Petition, Ex. A at 25 (Guidelines and Technical Basis) (hereinafter Guidelines).

[17] *Id.* 18, and Ex. A at 4.

[18] *Id.,* Ex. A at 4 (Rationale for R1).

[19] *Id.* 10.

their associated generator step-up transformers (GSUs) and connecting elements, are based on the response of the synchronous generator to depressed transmission system voltage (with allowances for reactive power losses across the GSU transformer). The criteria for relays applied on asynchronous generators and their associated GSU transformers and connecting elements are based on the more limited response of an asynchronous generator to the depressed voltage (with no allowance for loss of reactive power across the GSU transformer because such losses are not significant).[20] The criteria for relays applied on unit auxiliary transformers (UATs) that supply station service are based on the increased current requirements of station service load during a depressed voltage condition.

11. In its justification for approval of the proposed standard, NERC explains that ''[a]nalyses of power system disturbances over the past twenty-five years have found generators to have tripped unnecessarily—an occurrence that has the potential to extend the scope and duration of a disturbance.'' [21] According to NERC, during the recovery phase of a disturbance, system voltage may be widely depressed and may fluctuate. To support the system during this phase of a disturbance, NERC explains that the proposed standard ''establishes criteria for setting load-responsive relays such that individual generators may provide Reactive Power within their dynamic capability during transient time periods,'' thereby avoiding unnecessary tripping of generators and ensuring that ''dynamic capability is available to support system recovery.'' [22]

12. NERC proposes Requirement R1 of PRC–025–1 be assigned a ''High'' violation risk factor, and a ''Severe'' violation severity level for failure to apply settings as required. NERC's Implementation Plan proposes that applicable entities must be in compliance with the new standard: (1) 60 months after regulatory approval where compliance can be achieved without replacement or removal of relays; or (2) 84 months after regulatory approval if replacement or removal of relays is necessary.[23]

[20] *Id.* 11.

[21] *Id.* 9.

[22] *Id.* 9–10.

[23] *See* Sept. 30 Petition, Ex. B (Implementation Plan).

2. Proposed Reliability Standard PRC–023–3

13. On December 17, 2013, NERC submitted proposed clarifying changes to Reliability Standard PRC–023–2, as reflected in PRC–023–3, as ''Supplemental Information'' to its Sept. 30 Petition.[24] NERC explains in its Supplemental Filing that these changes were identified during development of PRC–025–1 as ''necessary to establish a bright-line distinction between the applicability of load-responsive protective relays in the transmission and generator relay loadability Reliability Standards.'' [25] NERC explains that stakeholders became concerned about potential compliance overlap between the new generator relay loadability standard, PRC–025–1, and existing standard PRC–023–2, which currently applies to certain elements that connect GSU transformers to the transmission system.

14. In order to clarify that proposed standard PRC–025–1 is intended to cover ''all load responsive protective relays applied at the terminals of generators and GSU transformers,'' [26] NERC proposes to remove Criteria 6 of Requirement R1 from PRC–023–2 in its entirety. That sub-requirement currently requires applicable entities to:

> Set transmission line relays applied on transmission lines connected to generation stations remote to load so they do not operate at or below 230% of the aggregated generation nameplate capability.[27]

NERC also proposes to change the applicability section of PRC–023–2 to exclude ''Elements that connect the GSU transformer(s) to the Transmission system that are used exclusively to export energy directly from a BES generating unit or generating plant.'' [28]

15. NERC explains in its Supplemental Filing that the two relay loadability standards, as revised, would be based on the location where the relays are applied and not on the intended protection functions, which it believes is advantageous because it:

> (i) Facilitates the establishment of generator relay loadability requirements based on the physics associated with increased generator output during stressed system conditions.
>
> (ii) Avoids ambiguity as to whether the intended protection function is for the generating unit or the Transmission System.
>
> . . .
>
> (iii) Provides clear division of applicability between the Generator and Transmission Relay Loadability Reliability Standards based on the physical location, independent of the entity that owns the relay.[29]

16. Under NERC's proposed implementation plan, Reliability Standard PRC–023–3 will become effective on the first day of the first calendar quarter beyond the date that the standard is approved by the applicable regulatory authority. Reliability Standard PRC–023–2 would be retired immediately prior to the effective date of PRC–023–3, except that Criterion 6 of Requirement R1 would remain in effect until the effective date of PRC–025–1. Any implementation dates or milestones established under PRC–023–2 would remain in place.[30]

II. Discussion

17. Pursuant to section 215(d)(2) of the FPA, the Commission proposes to approve Reliability Standard PRC–025–1, including its associated violation risk factors and violation severity levels, Reliability Standard PRC–023–3, and NERC's proposed implementation plans for the new and revised standards. PRC–025–1 appears to adequately address the Commission directive in Order No. 733 that NERC develop a separate Reliability Standard that addresses generator step-up and auxiliary transformer loadability, and do so ''in a way that is coordinated with the Requirements and expected outcomes of PRC–023–1.'' [31] In addition, we believe that PRC–025–1 will enhance reliability by imposing mandatory requirements governing generator relay loadability settings, thereby reducing the likelihood of premature or unnecessary tripping of generators during system disturbances.

18. We also propose to approve the clarifying modifications reflected in Reliability Standard PRC–023–3,

[24] *Supplemental Information to the Petition of the North American Electric Reliability Corp. for Approval of Proposed Reliability Standard PRC–025–1 (Generator Relay Loadability),* Docket No. RM14–3–000 (Dec. 17, 2013) (Supplemental Filing).

[25] *Id.* 1–2.

[26] *See id.* at 4.

[27] *See* Supplemental Filing, Ex. A, Redline of PRC–023–2 at 6.

[28] *See* Supplemental Filing at 4, and Ex. A, Proposed Reliability Standard PRC–023–3, Sections 4.2.1.1 and 4.2.2.1.

[29] Supplemental Filing at 5.

[30] As part of its Supplemental Filing, NERC also submitted a report on UAT relay loadability to address concerns raised by minority commenters during the development of PRC–025–1 as to whether UAT relays on the low-voltage side should be included. *See id.* at 6 and Ex. E. The report concludes that there is no adverse reliability impact from Reliability Standard PRC–025–1 as proposed, and finds that ''based on a comparison of the simulation models and the actual event data, the simulation results are conservative. The model results, coupled with the NERC Generating Availability Data System (GADS) analysis, are indicative that a reliability gap does not result from excluding relays on the low-voltage side of the UAT from PRC–025–1.'' Supplemental Filing at 6, Ex. E at 6.

[31] *See* Order No. 733, 130 FERC ¶ 61,221 at PP 104–106.

because we agree they serve to clarify the applicability of the two standards governing relay loadability and prevent potential compliance overlap due to inconsistencies.

III. Information Collection Statement

19. The collection of information contained in this Notice of Proposed Rulemaking is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[32] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[33] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

20. We solicit comments on the need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

21. The Commission proposes to approve Reliability Standard PRC–025–1 and to approve revisions to PRC–023–2. Proposed Reliability Standard PRC–025–1 will impose new requirements to set certain generator protective relays in accordance with prescribed criteria, and will apply to transmission owners, distribution providers, and generator owners with applicable relays. Affected entities will have to ensure that their relays are set in accordance with these criteria and maintain records or other evidence demonstrating their compliance with the standard's requirements. The revisions to PRC–023–2 will result in a change in how relay settings are calculated for certain kinds of relays, but will not result in reporting or recordkeeping requirements or burden.

Public Reporting Burden: Proposed Reliability Standard PRC–025–1 does not require responsible entities to file information with the Commission. However, the Reliability Standard requires applicable entities to develop and maintain certain information, subject to audit by a Regional Entity. In particular, transmission owners, generator owners and distribution providers must ''have evidence'' to show that each of its load-responsive protective relays are set according to one of the options in Attachment 1 to Reliability Standard PRC–025–1. Our estimate below regarding the number of respondents is based on the NERC compliance registry as of January 31, 2014. According to the NERC compliance registry, NERC has registered 539 distribution providers, 903 generator owners and 344 transmission owners. However, under NERC's compliance registration program, entities may be registered for multiple functions, so these numbers incorporate some double counting. The number of unique entities responding will be approximately 1,019[34] entities registered as a transmission owner, a distribution provider, or a generator owner that is also a transmission owner and/or a distribution owner. The Commission estimates the annual reporting burden and cost as follows:

FERC–725Q,[35] AS MODIFIED IN NOPR IN RM13–19 AND RM14–3

	Number and type of respondents[36] (1)	Annual number of responses per respondent (2)	Total number of responses	Averge burden and cost per response (3)	Total annual burden hours and total annual cost (1) × (2) × (3)	Cost per respondent[37]
(One-time) Review & documentation of relay settings to ensure compliance.	1,019 GO/DP/TO.	1	1,019	20 hrs. & $59.62/hour.	20,380 hours & $1,215,056.	$1192
(On-going) Record Retention (of compliance records for R1 and M1, for 3 years or until mitigation complete).	1,019 GO/DP/TO.	1	1,019	2 hrs. & $28.95/hour.	2,038 hours & $59,000.	$57.90

Title: Mandatory Reliability Standards for the Bulk-Power System.

Action: Proposed FERC–725Q.

OMB Control No: To Be Determined.

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

Frequency of Responses: One-time and ongoing.

Necessity of the Information: The Generator Relay Loadability Reliability Standard, if adopted, would implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the purpose of the proposed Reliability Standard is to set load-responsive protective relays associated with generation facilities at a level to prevent unnecessary tripping of generators during a system disturbance for conditions that do not pose a risk of damage to the associated equipment. The proposed Reliability Standard requires entities to maintain records subject to review by the Commission and NERC to ensure compliance with the Reliability Standard.

[32] 44 U.S.C. 3507(d) (2012).

[33] 5 CFR 1320.11 (2013).

[34] This estimate assumes all of the unique entities apply load-responsive protective relays.

[35] Normally these reporting and recordkeeping requirements would be included under FERC–725G (OMB Control No. 1902–0252). However, only one request per OMB Control Number can be pending OMB review at a time. Because a pending and unrelated rulemaking also affects other aspects of FERC–725G, the reporting and record retention requirements for this NOPR in RM13–19 and RM14–3 will be submitted to OMB for review under FERC–725Q.

[36] GO = Generator Owner, DP = Distribution Provider, TO = Transmission Owner, each of whom applies load-responsive protective relays at the terminals of the Elements listed (in the Standard) 3.2, Facilities.

[37] The estimated hourly costs (salary plus benefits) are based on Bureau of Labor and Statistics (BLS) information (*available at http://bls.gov/oes/current/naics3_221000.htm#17–0000*) for an electrical engineer ($59.62/hour for review and documentation), and for a file clerk (*$28.95/hour* for record retention).

Internal Review: The Commission has reviewed the requirements pertaining to the proposed Reliability Standard for the Bulk-Power System and determined that the proposed requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

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

23. Comments concerning the information collections proposed in this NOPR and the associated burden estimates should be sent to the Commission in these dockets and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please reference FERC–725Q and the docket numbers of this Notice of Proposed Rulemaking (Docket Nos. RM13–19–000 and RM14–3–000) in your submission.

IV. Regulatory Flexibility Act Certification

24. The Regulatory Flexibility Act of 1980 (RFA)[38] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA's) Office of Size Standards develops the numerical definition of a small business.[39] The SBA recently revised its size standard for electric utilities (effective January 22, 2014) to a standard based on the number of employees, including affiliates (from a standard based on megawatt hours).[40] Under SBA's new size standards, generator owners, distribution providers, and transmission owners likely come under one of the following categories and associated size thresholds:[41]

- Hydroelectric power generation, at 500 employees.
- Fossil fuel electric power generation, at 750 employees.
- Nuclear power generation, at 750 employees.
- Other electric power generation (e.g. solar, wind, geothermal, and others), at 250 employees.
- Electric bulk power transmission and control, at 500 employees.
- Electric power distribution, at 1,000 employees.

25. Based on U.S. economic census data,[42] the approximate percentages of small firms in these categories varies from 24 percent to 94 percent. However, currently FERC does not have information on how the economic census data compares with entities registered with NERC and is unable to estimate the number of small GOs, DPs, and TOs using the new SBA definitions.[43] Regardless, FERC recognizes that the rule will likely impact small GOs, DPs, and TOs and estimates the economic impact on each entity below.

26. Proposed Reliability Standard PRC–025–1 will serve to enhance reliability by imposing mandatory requirements governing generator relay loadability, thereby reducing the likelihood of premature or unnecessary tripping of generators during system disturbances. The Commission estimates that each of the small entities to whom the proposed Reliability Standard PRC–025–1 applies will incur one-time compliance costs of $4,480 (i.e., the cost of re-setting any relays found to be out of compliance),[44] plus paperwork and record retention costs of $1,192 (one-time implementation) and $57.90 (annual ongoing).[45] Per entity, the total one-time implementation costs are estimated to be $5,672 (including paperwork and non-paperwork costs) and the annual ongoing costs are estimated to be $57.90.

27. The Commission does not consider the estimated costs per small entity to have a significant economic impact on a substantial number of small entities. Accordingly, the Commission certifies that this NOPR will not have a significant economic impact on a substantial number of small entities.

V. Environmental Analysis

28. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[46] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[47] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

VI. Comment Procedures

29. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due April 28, 2014. Comments must refer to Docket Nos. RM13–19–000 and RM14–3–000, and must include the commenter's name, the organization they represent, if applicable, and address.

30. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

[38] 5 U.S.C. 601–612 (2012).

[39] 13 CFR 121.101 (2013).

[40] SBA Final Rule on ''Small Business Size Standards: Utilities,'' 78 FR 77343 (12/23/2013).

[41] 13 CFR 121.201, Sector 22, Utilities.

[42] Data and further information are available from SBA *available at http://www.sba.gov/advocacy/849/12162.*

[43] Using the previous SBA definition, 230 of the 1,019 entities affected by the proposed PRC–025–1 would have qualified as small entities.

[44] These are non-paperwork related costs, which are not reflected in the burden described in the Information Collection Section above, and instead reflect the burden of re-setting relays in order to comply with the new requirements of PRC–025–1. Specifically, this figure reflects an estimated time of 8 hours per relay, assuming an average of 8 digital relays which will need to be re-set per small entity, at a cost of $70 per hour (the average of the salary plus benefits for a manager and an engineer, from Bureau of Labor and Statistics *available at http://bls.gov/oes/current/naics3_221000.htm and http://www.bls.gov/news.release/ecec.nr0.htm*).

[45] The one-time paperwork-related implementation cost estimate is based on a burden of 20 hours at $59.62/hour, and the annual record-keeping cost estimate is based on a burden of 2 hours at $28.95/hour. *See supra* at 21 and P 1 note/39.

[46] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[47] 18 CFR 380.4(a)(2)(ii).

31. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

32. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

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

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

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

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–06591 Filed 3–26–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–120282–10]

RIN 1545–BJ56

Dividend Equivalents From Sources Within the United States; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations that provides guidance to nonresident alien individuals and foreign corporations that hold certain financial products providing for payments that are contingent upon or determined by reference to U.S. source dividend payments and to withholding agents.

DATES: The public hearing originally scheduled for April 11, 2014 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Oluwafunmilayo Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 317–6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A withdrawal notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Thursday, December 5, 2013 (78 FR 73128) announced that a public hearing was scheduled for April 11, 2014, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 871(m) of the Internal Revenue Code.

The public comment period for these regulations expired on March 5, 2014. The withdrawal notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed by March 5, 2014. As of Wednesday, March 19, 2014, no one has requested to speak. Therefore, the public hearing scheduled for April 11, 2014, is cancelled.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2014–06712 Filed 3–26–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2014–0138]

RIN 1625–AA08

Special Local Regulations for Marine Events, Nanticoke River; Bivalve, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Coastal Aquatics Swim Team Open Water Summer Shore Swim'', a marine event to be held on the waters of the Nanticoke River at Bivalve, MD on June 29, 2014. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Nanticoke River during the event.

DATES: Comments and related material must be received by the Coast Guard on or before April 28, 2014. The Coast Guard anticipates that this proposed rule will be effective on June 29, 2014.

ADDRESSES: 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 Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. 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 [USCG–2014–0138] 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 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change 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 (USCG–2014–0138) 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, 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

The current regulations under 33 CFR part 100 address safety for reoccurring marine events. This marine event does not appear in the current regulations; however, as it is a regulation to provide effective control over regattas and marine parades on the navigable waters of the United States so as to insure safety of life in the regatta or marine parade area, this marine event therefore needs to be temporarily added.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Coastal Aquatics Swim Team Open Water Summer Shore Swim event.

D. Discussion of Proposed Rule

On June 29, 2014, the Coastal Aquatics Swim Club of Salisbury, Maryland, is sponsoring the inaugural ''Coastal Aquatics Swim Team Open Water Summer Shore Swim'' in the Nanticoke River at Bivalve, MD. The event will occur from 8:30 a.m. to 12 p.m. Noon. Approximately 200 youth swimmers will compete on ½-mile, 1-mile and 2-mile endurance open water courses located adjacent to Cedar Hill Marina Park. All participants will start and finish at the Cedar Hill Marina beach. The inaugural Coastal Aquatics Swim Team Open Water Summer Shore Swim is sanctioned by Maryland Swimming Inc. Participants will be supported by sponsor-provided watercraft.

The Coast Guard proposes to establish special local regulations on specified waters of the Nanticoke River. The regulations will be enforced from 8 a.m. to 12:30 p.m. on June 29, 2014. The regulated area includes all waters of Nanticoke River, bounded by a line drawn from a point on the shoreline at latitude 38°19′15″ N, longitude 075°53′13″ W, thence westerly to latitude 38°19′23″ N, longitude 075°53′45″ W, thence southerly to latitude 38°18′51″ N, longitude 075°54′01″ W, thence easterly to latitude 38°18′42″ N, longitude 075°53′31″ W, located at Bivalve, MD.

The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Vessels intending to transit the Nanticoke River through the regulated area will be allowed to safely transit the regulated area only when the Coast Guard Patrol Commander has deemed it safe to do so. The Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and the official patrol on scene.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving

Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for only 4½ hours; (2) the regulated area has been narrowly tailored to impose the least impact on general navigation, yet provide the level of safety deemed necessary; (3) persons and vessels will be able to transit safely around the regulated area; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Nanticoke River encompassed within the special local regulations from 8 a.m. to 12:30 p.m. on June 29, 2014. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it would 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 proposed rule 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves special local regulations issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary 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 proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35–T05–0138 to read as follows:

§ 100.35–T05–0138 Special Local Regulations for Marine Events, Nanticoke River; Bivalve, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of the Nanticoke River, bounded by a line drawn from a point on the shoreline at latitude 38°19′15″ N, longitude 075°53′13″ W, thence westerly to latitude 38°19′23″ N, longitude 075°53′45″ W, thence southerly to latitude 38°18′51″ N, longitude 075°54′01″ W, thence easterly to latitude 38°18′42″ N, longitude 075°53′31″ W, located at Bivalve, MD. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U. S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all persons and vessels participating in the Coastal Aquatics Swim Team Open Water Summer Shore Swim event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) With the exception of participants, all persons desiring to transit the regulated area must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(3) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant in the event, at any time it is deemed necessary for the protection of life or property.

(4) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) Enforcement period: This section will be enforced from 8 a.m. to 12:30 p.m. on June 29, 2014.

Dated: March 12, 2014.

M.M. Dean,

Commander, U.S. Coast Guard, Acting Captain of the Port Baltimore.

[FR Doc. 2014–06832 Filed 3–26–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0148]

RIN 1625–AA00

Safety Zone, Fifth Coast Guard District Fireworks Display Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a temporary change to the enforcement location of a safety zone for one specific recurring fireworks display in the Fifth Coast Guard District. This regulation applies to only one recurring fireworks event, held adjacent to the Cape Fear River, Wilmington, North Carolina. The fireworks display formerly originated from a location on land but this year will originate from a barge. The safety zone is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Cape Fear River, Wilmington, North Carolina, during the event.

DATES: Comments and related material must be received by the Coast Guard on or before April 28, 2014.

ADDRESSES: 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 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 Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. 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 [USCG–2014–0148] 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 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change 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 (USCG–2014–0148) 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, 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 fireworks display event is regulated at 33 CFR 165.506, Table to § 165.506, section (d.) line 2. On June 25, 2013, a Temporary Final Rule (TFR) was published amending 33 CFR 165.506, Table to § 165.506, section (d.) line 2 entitled ''Safety Zone, Fifth Coast Guard District Fireworks Display Cape Fear River; Wilmington, NC'' in the **Federal Register** (78 FR 37963). The Coast Guard plans to permanently amend the regulation at 33 CFR 165.506 at a later date to reflect this change.

C. Basis and Purpose

Recurring fireworks displays are frequently held on or adjacent to the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

The regulation listing annual fireworks displays within the Fifth Coast Guard District and safety zones locations is 33 CFR 165.506. The Table to § 165.506 identifies fireworks displays by COTP zone, with the COTP North Carolina zone listed in section ''(d.)'' of the Table.

The Battleship NORTH CAROLINA Commission has relinquished sponsorship to the City of Wilmington for the annual fireworks display held on July 4 over the waters of Cape Fear River at Wilmington, North Carolina. The Table to § 165.506, at section (d.) event Number ''2'', describes the enforcement date and regulated location for this fireworks event.

The location listed in the Table has the fireworks display originating from a location, on land, on the north bank of the Cape Fear River at Wilmington, North Carolina. However, the coordinator for this event changed the fireworks launch location for July 4, 2014, to a position on the Cape Fear River at latitude 34°14′17″ N longitude 077°57′11″ W.

A fleet of spectator vessels is anticipated to gather nearby to view the fireworks display. Due to the need for vessel control during the fireworks display vessel traffic will be temporarily restricted to provide for the safety of participants, spectators, and transiting vessels. Under provisions of 33 CFR 165.506, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

D. Discussion of Proposed Rule

The Coast Guard is proposing to temporarily suspend the regulation listed in Table to § 165.506, section (d) event Number 2, only in regards to the July 4th event, and insert this temporary regulation at Table to § 165.506, at section (d) as event Number ''15'', in order to reflect that the fireworks display will originate from a barge in the Cape Fear River and therefore the regulated area is changed. This change is needed to accommodate the sponsor's event plan. No other portion of the Table to § 165.506 or other provisions in § 165.506 shall be affected by this regulation.

The regulated area of this safety zone includes all waters of the Cape Fear River within a 300 yards radius of latitude 34°14′17″ N longitude 077°57′11″ W.

This safety zone will restrict general navigation in the regulated area during the fireworks event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period. The regulated area is needed to control vessel traffic during the event for the safety of participants and transiting vessels.

The enforcement period for this safety zone does not change from that enforcement period listed in § 165.506(d)2. Therefore, this safety zone will be enforced from 5:30 p.m. on July 4, 2014 through 1 a.m. on July 5, 2014.

In addition to notice in the **Federal Register**, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed 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. Although this regulation restricts access to a small segment of the Cape Fear River, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly. Additionally, this rulemaking changes the regulated area for the Cape Fear River fireworks demonstration for July 4, 2014 only and does not change the permanent regulated area that has been published in 33 CFR 165.506, Table to § 165.506 at portion ''d'' event Number ''2''. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the Cape Fear River where fireworks events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the fireworks display event that has been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the regulated area when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it would 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 proposed rule 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves establishing a safety zone for a fireworks display launch site and fallout area and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays. This rule is categorically excluded from further review under paragraph 34 (g) of Figure 2–1 of the Commandant Instruction. A preliminary 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 proposed 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 proposes to amend 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. At § 165.506, in the Table to § 165.506, make the following amendments:

■ a. Under ''(d) Coast Guard Sector North Carolina—COTP Zone,'' suspend entry 2, from 5:30 p.m. on July 4, 2014 to 1 a.m. on July 5, 2015.

■ b. Under, ''(d) Coast Guard Sector North Carolina—COTP Zone,'' add entry 15, which will be enforced from 5:30 p.m. on July 4, 2014 to 1 a.m. on July 5, 2014, to read as follows:

§ 165.506–T05–0148 Safety Zones; Fifth Coast Guard District Fireworks Displays, Cape Fear River, Wilmington, NC.

* * * * *

No.	Date	Location	Regulated area
(d) Coast Guard Sector North Carolina—COTP Zone			
*	*	*	* * * *
15	July 4–5, 2014 ...	Cape Fear River, Wilmington, NC, Safety Zone.	All waters of the Cape Fear River within a 300 yard radius of the fireworks launch barge in approximate position latitude 34°14′17″ N longitude 077°57′11″.

Dated: March 16, 2014.

S.R. Murtagh,

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

[FR Doc. 2014–06837 Filed 3–26–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2013–0775; FRL–9906–72–OAR]

RIN 2060–AR92

Air Quality: Revision to the Regulatory Definition of Volatile Organic Compounds—Exclusion of 2-amino-2-methyl-1-propanol (AMP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the regulatory definition of volatile organic compounds (VOCs) under the Clean Air Act (CAA). This proposed revision would add 2-amino-2-methyl-1-propanol (also known as AMP; CAS number 124–68–5) to the list of compounds excluded from the regulatory definition of VOCs on the basis that this compound makes a negligible contribution to tropospheric ozone formation. In the ''Rules and Regulations'' section of this **Federal Register**, we are making this same amendment as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received on or before May 27, 2014.

Public Hearing: If anyone contacts the EPA requesting a public hearing concerning the proposed regulation by April 11, 2014, we will hold a public hearing on April 28, 2014. If a public hearing is held, it will be held at 10 a.m. at Building C on the EPA campus in Research Triangle Park, NC, or at an alternate site nearby. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0775, by one of the following methods:

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

• *Email: a-and-r-Docket@epamail.epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2013–0775.

• *Fax:* 202–566–9744, Attention Docket ID No. EPA–HQ–OAR–2013–0775.

• *Mail:* Docket ID No. EPA–HQ–OAR–2013–0775, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., William Jefferson Clinton West Building, Room: 3334, Mail Code: 28221T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2013–0775. 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–OAR–2013–0775. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov,* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 the 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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket ID No. EPA–HQ–OAR–2013–0775, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Souad Benromdhane, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Mail Code C539–07, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: (919) 541–4359; fax number: (919) 541–5315; email address: *benromdhane.souad@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Why is the EPA using a direct final rule?

We are publishing a direct final rule in the ''Rules and Regulations'' section of this **Federal Register** because we view this action as a noncontroversial action and anticipate no adverse comment.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this action will be posted on the EPA's Web site *www.epa.gov/ttn/oarpg/new/html.*

C. What should I consider as I prepare my comments for the EPA?

Submitting CBI: Do not submit this information to the EPA through *www.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 the 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.

D. How can I find information about a possible public hearing?

Public Hearing: If anyone contacts the EPA requesting to present oral testimony at a public hearing concerning the proposed regulation by April 11, 2014, we will hold a public hearing on April 28, 2014. If a public hearing is held, it will be held at 10 a.m. at Building C on the EPA campus in Research Triangle Park, NC, or at an alternate site nearby. Persons interested in presenting oral testimony must contact Sherry Russell, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Mail Code C504–02, Research Triangle Park, NC 27711; telephone: (919) 541–0306; fax number: (919) 541–2464; email address: *russell.sherry@epa.gov,* no later than April 11, 2014. Persons interested in attending the public hearing if one is held must also call Ms. Russell to verify the time, date and location of the hearing. If no one contacts Ms. Russell by April 11, 2014 with a request to present oral testimony at the hearing, we will cancel the hearing. To find out if a hearing has been requested, please check the EPA's Web site *www.epa.gov/ttn/oarpg/new/html* for further information, or contact Ms. Sherry Russell at *russell.sherry@epa.gov.*

II. Proposed Rule

This proposed action would revise the EPA's regulatory definition of VOCs for purposes of preparing SIPs to attain the NAAQS for ozone under title I of the CAA, by adding AMP to the list of compounds excluded from the regulatory definition of VOCs on the basis that this compound makes a negligible contribution to tropospheric ozone formation.[1] We have explained our reasons for this action in the preamble to the direct final rule. The regulatory text for the proposal is identical to that for the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published under ''Rules and Regulations'' of this **Federal Register**.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule, and take further action on this proposed rule. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further

[1] 2-amino-2-methyl-1-propanol (AMP) is also known as Isobutanolamine and CAS No. 124–68–5.

information, please see the information in the **ADDRESSES** section of this document.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). It does not contain any recordkeeping or reporting requirement.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 proposed 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 notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.); (2) A governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (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 today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This proposed rule would remove AMP from the regulatory definition of VOCs and thereby relieve users of the compound from requirements to control emissions of the compound. We have therefore concluded that today's proposed rule would relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule would remove AMP from the regulatory definition of VOCs and thereby relieve users of the compound from requirements to control emissions of the compound.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule would remove AMP from the regulatory definition of VOCs and thereby relieve users of the compound from requirements to control emissions of the compound. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule would remove AMP from the regulatory definition of VOCs and thereby relieve users of the compound from requirements to control emissions of the compound. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. While this proposed rule is not subject to the Executive Order, the EPA has reason to believe that at higher concentrations ozone has a disproportionate effect on active children who play outdoors (62 FR 38856; 38859, July 18, 1997). The EPA has not identified any specific studies on whether or to what extent AMP may affect children's health. The public is invited to submit comments or identify peer-reviewed studies and data, of which the EPA may not be aware, that assess results of early life exposure to the chemical compound herein.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211, (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 proposed rule would remove AMP from the regulatory definition of VOCs and thereby relieve users of the compound from requirements to control its emissions.

I. 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 the EPA to use voluntary

consensus standards in its 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 the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, the EPA has not considered the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 21, 2014.

Gina McCarthy,

Administrator.

[FR Doc. 2014–06789 Filed 3–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0248; FRL–9908–47–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Carbon Monoxide Second Limited Maintenance Plan for the Pittsburgh Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania, which consists of a second limited maintenance plan for the carbon monoxide (CO) Pittsburgh Area (''the Pittsburgh Area'' or ''the Area'') in Allegheny County, formerly designated as a CO nonattainment area. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 28, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0248 by one of the following methods:

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

B. *Email: Fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0248, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2012–0248. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105 and at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301

39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: March 7, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2014–06698 Filed 3–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9908–63–Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Coleman-Evans Wood Preserving Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is issuing a Notice of Intent to Delete the Coleman-Evans Wood Preserving Superfund Site (Site) located in Whitehouse, Florida, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Florida, through the Florida Department of Environmental Protection (FDEP), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by April 28, 2014.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov*. Follow on-line instructions for submitting comments.
- *Email: kestle.rusty@epa.gov*.
- *Fax:* 404–652–8896.
- *Mail:* Rusty Kestle, 61 Forsyth Street SW., Atlanta, GA 30303–8909.
- *Hand Delivery:* 61 Forsyth Street SW., Atlanta, GA 30303–8909. 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–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public 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 *http://www.regulations.gov* or email. The *http://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 *http://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.

Docket: All documents in the docket are listed in the *http://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 statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at: 61 Forsyth St. SW., Atlanta, GA 30303–8960; or the local document repository at the West Regional Jacksonville Public Library, 1425 Chaffee Rd S., Jacksonville, FL 32221.

FOR FURTHER INFORMATION CONTACT: Rusty Kestle, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, GA 30303–8909, (404) 562–8819, email: *kestle.rusty@epa.gov*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of Coleman-Evans Wood Preserving Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

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

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

Dated: December 13, 2013.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 2014–06699 Filed 3–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9908–41–Region–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Moyer's Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region III is issuing a Notice of Intent to Delete the Moyer's Landfill Superfund Site (Site) located in Lower Providence Township, Montgomery County, Pennsylvania, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by April 28, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: fang.sharon@epa.gov.*
- *Fax:* (215) 814–3002, Attn: Sharon Fang
- *Mail:* U.S. Environmental Protection Agency, Region III, Attn: Sharon Fang (3HS21), 1650 Arch Street, Philadelphia, PA 19103–2029
- *Hand Delivery:* U.S. Environmental Protection Agency, Region III, Attn: Sharon Fang (3HS21), 1650 Arch Street, Philadelphia, PA 19103–2029; Phone: 215–814–3018; Business Hours: Mon. thru Fri.—9:00 a.m. to 4:00 p.m. 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–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public 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 *http://www.regulations.gov* or email. The *http://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 *http://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.

Docket

All documents in the docket are listed in the *http://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 the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Region III, Superfund Records Center, 6th Floor, 1650 Arch Street, Philadelphia, PA 19103–2029; (215) 814–3157, Monday through Friday 8:00 a.m. to 5:00 p.m.

The Lower Providence Township Building, 100 Parkland Drive, Eagleville, PA 19403; phone (610) 539–8020. Monday through Friday 8:00 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Sharon Fang, Remedial Project Manager (3HS21), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029; (215) 814–3018; email: *fang.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Moyer's Landfill Superfund Site without prior Notice of Intent to Delete because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion, which is located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

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

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

Dated: February 27, 2014.

Shawn M. Garvin,

Regional Administrator, Environmental Protection Agency, Region 3.

[FR Doc. 2014–06812 Filed 3–26–14; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[CG Docket No. 05–231; FCC 14–12]

Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing Petition for Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission issues a Further Notice of Proposed Rulemaking (*FNPRM*) seeking comment on options and proposals to further enhance accessibility to television programming and to improve the Commission's procedural rules regarding closed captioning.

DATES: Comments on the section entitled Responsibilities for Meeting the Closed Captioning Requirements (paragraphs 1–8) are due on or before April 28, 2014, and reply comments are due on or before May 27, 2014. Comments on remaining sections are due on or before June 25, 2014, and reply comments are due on or before July 25, 2014.

ADDRESSES: You may submit comments, identified by CG Docket No. 05–231, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 05–231.

- Paper filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.
- In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com*.

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: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235 or email *Eliot.Greenwald@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking,* Further Notice of Proposed Rulemaking (*FNPRM*), document FCC 14–12, adopted on February 20, 2014 and released on February 24, 2014, in CG Docket No. 05–231. In document FCC 14–12, the Commission adopted an accompanying Report and Order (*Report and Order*), which is summarized in a separate **Federal Register** Publication. The full text of document FCC 14–12 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com*. Document FCC 14–12 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/encyclopedia/disability-rights-office-headlines. http://www.fcc.gov/encyclopedia/closed-captioning-video-programming-television*. 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 and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Paperwork Reduction Act of 1995 Analysis

Document FCC 14–12 seeks comment on potential new information collection requirements. If the Commission adopts any new information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Synopsis

Responsibilities for Meeting the Closed Captioning Obligations

1. The Commission has previously placed direct responsibility for

compliance with the closed captioning requirements on VPDs. *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility,* MM Docket No. 95–176, Report and Order, (*1997 Closed Captioning Report and Order*); published at 62 FR 48487, September 16, 1997, *reconsideration granted in part,* MM Docket No. 95–176, Order on Reconsideration, (*Closed Captioning Reconsideration Order*); published at 63 FR 55959, October 20, 1998. The Commission seeks comment on whether the Commission should extend some of the responsibilities for compliance with the Commission's closed captioning quality standards for programming shown on television to video programmers, which are a subset of video programming providers (VPPs). In the television captioning context, VPPs include VPDs as well as video programmers, *i.e.,* ''any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast and non-broadcast television network and the owners of such programming.'' *See* 47 CFR 79.1(a)(3). In the *Report and Order,* the Commission defines a video programmer as ''entities that provide video programming that is intended for distribution to residential households including, but not limited to, broadcast or non-broadcast television networks and the owners of such programming.'' The Commission also seeks comment on whether this definition is sufficiently broad in scope to hold accountable all entities with direct control over caption quality or whether the Commission should expand the definition to cover other categories of entities and, if so, what other entities should be covered. Commenters advocating covering other entities should address the Commission's authority to regulate those entities.

2. In addition to VPPs, the definition of video programmers includes ''the owners of such programming.'' The Commission has defined the term video programming owners (VPOs) for purposes of ensuring captions on video programming delivered via Internet protocol, but not for purposes of delivering television programs with captions. The Commission seeks comment on whether the Commission should define the term VPO for purposes of the television closed captioning rules. The Commission seeks comment on an appropriate definition for VPOs in the television context with respect to the provision of closed captioning. For example, should the Commission include in the definition of VPO a person or entity that licenses video programming to a video programming distributor or provider that makes the video programming available directly to the end user? What other entities should be covered under the definition of VPO in this context, and why?

3. Some interested parties support extension of the responsibility for caption quality to other entities in the captioning chain, in addition to VPDs, in the television context. For example, Comcast/NBCUniversal (Comcast) proposes adopting a ''burden-shifting enforcement model'' that extends some captioning responsibilities to VPOs. It appears that the category of VPOs Comcast proposes to reach would be covered under the Commission's definition of ''video programmers'' as defined in the accompanying *Report and Order, i.e.,* ''entities that provide video programming that is intended for distribution to residential households including, but not limited to, broadcast or non-broadcast television networks, and the owners of such programming.'' The Comcast proposal would give a VPD the initial burden of addressing and investigating matters brought to its attention concerning the closed captioning quality rules adopted in the accompanying *Report and Order.* If the problem at issue relates to the pass-through of captions or the VPD's equipment, the VPD would be responsible for fixing it and bear any associated liability in an enforcement proceeding if one were to be initiated, because these are problems within the VPD's direct control. If, however, the VPD learns that the problems raised are within the control of the VPO, the compliance burden would shift to the VPO, which would be charged with fixing the problem and bear any associated liability in an enforcement proceeding.

4. The Commission seeks comment on Comcast's burden-shifting proposal and whether it would result in an appropriate allocation of responsibilities for addressing failures to meet the Commission's captioning quality rules. Is this approach likely to achieve a prompter and more effective resolution of captioning quality problems brought to the VPD's attention? Will this model provide strong incentives for the various parties associated with program production and delivery to work cooperatively to improve captioning quality, as suggested by Comcast? Finally, the Commission notes that under the Comcast proposal, a VPD would be relieved of any liabilities associated with captioning problems once it determined that the problems raised are within the control of the VPO. The Commission seeks comment on how the Commission can be assured that when responsibility for captioning problems are shifted to other programming entities, VPDs will have appropriately transferred such liability. Should each VPD be obligated to report to the Commission when they shift this burden, with information about the results of its initial investigation to warrant this shift? Should the VPD remain jointly responsible with the programmer after informing the programmer about the need for the programmer to address the problem? The Commission asks commenters generally to provide input on the advantages and disadvantages of adopting Comcast's proposal, including its feasibility, as well as the costs and benefits of shifting responsibility for direct compliance with the Commission's closed captioning requirements to other entities responsible for the production and delivery of video programming.

5. Are there other approaches the Commission should consider using to apportion responsibilities for compliance with the television caption quality rules among entities involved in the production and delivery of video programming? Should any changes to the apportionment of these responsibilities apply generally to all captioning obligations, or only to the newly adopted captioning quality rules? To what extent should responsibilities be joint and several among specific entities? For example, is it preferable to place the ultimate responsibility for compliance with a single entity or are there benefits to imposing joint responsibility on or dividing up responsibility among the responsible entities? What effect would the sharing of obligations across multiple entities have on consumers and industry, and to what extent can any negative effects be mitigated?

6. The Commission also seeks comment on the effect, if any, that extending responsibility for compliance to entities other than VPDs would have on the Commission's ability to efficiently monitor and enforce the closed captioning television rules. To what extent would the Commission's earlier predictions that VPDs would privately negotiate with VPOs and other VPPs regarding ''an efficient allocation of captioning responsibilities'' and that VPOs and other VPPs would ''cooperate with distributors to ensure that nonexempt programming is closed captioned in accordance with [the

Commission's] rules'' apply to the caption quality context? In the IP captioning context, the Commission determined that although VPDs and VPOs may enter into private contracts placing some obligations on VPOs, leaving VPOs' responsibilities to be defined entirely by private contractual arrangements would be more costly and less efficient than appropriately allocating certain responsibilities among both VPOs and VPDs by Commission rule. *IP Captioning Report and Order Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* MB Docket No. 11–154, Report and Order, (*IP Captioning Report and Order*); published at 77 FR 19480, March 30, 2012. Would a division of responsibilities for caption quality in the television context reduce or improve the Commission's efficiencies in overseeing the captioning rules? Is there a ''liability gap'' left by the Commission's decision in the *1997 Closed Captioning Report and Order* to limit regulatory oversight to VPDs that needs to be addressed with respect to the general implementation of the Commission's television captioning rules by extending regulatory oversight to VPOs, video programmers or other entities? For example, as noted above, § 79.1(g)(6) of the Commission's rules permits VPDs to rely on certifications from programming suppliers to demonstrate compliance with the Commission's captioning requirements. 47 CFR 79.1(g)(6). Will imposing shared responsibilities on other entities in the programming chain help to alleviate concerns that could arise if a VPD relies on such certifications without taking any additional steps to ensure that the programming at issue has in fact been delivered to the consumers with the captions intact and of a quality that now meets the Commission's captioning quality standards?

7. To the extent the Commission decides to impose some obligations directly on other programming entities, the Commission also seeks comment on whether any other changes to the rules or Best Practices adopted in the *Report and Order* are appropriate. For example, if the Commission extends obligations for compliance with the captioning quality standards directly to programmers, should the Commission allow such programmers to assert a safe harbor, which could then entitle them to take corrective actions to demonstrate compliance prior to being subject to enforcement action—akin to the compliance ladder adopted for stations in compliance with the new enhanced ENT procedures? Should the Commission similarly allow VPDs to assert a safe harbor, which would also entitle them to take corrective actions to demonstrate compliance prior to being subject to enforcement action, in the event certain obligations for compliance with the captioning quality standards are placed on VPDs? If the Commission were to extend direct compliance responsibility with its closed captioning requirements to video programmers or other programming entities, would it no longer be necessary to include § 79.1(g)(6) in the Commission's rules? In addition, the Commission seeks comment on whether there are similarities or differences between the television and the IP closed captioning contexts or the Commission's emergency information rule that justify similar or different regulatory approaches. The Commission seeks comment on any other issues related to extending some or all responsibility for compliance with the Commission's closed captioning requirements to other programming entities and asks commenters to address the costs and benefits of making any such adjustments to the Commission's rules.

8. Finally, the Commission invites parties generally to provide any information that they believe will contribute to a better understanding about which entities are ultimately better positioned to ensure compliance with the Commission's captioning quality standards.

Minimum Captioning Quality Standards

9. *Live Programming.* The Commission seeks comment on technical solutions for improving the synchronicity between the audio track and captions on live programming to facilitate understanding of a program's content. For example, would providing the captioner advance delivery of the audio by a few seconds help to reduce captioning latency? The Commission asks commenters to provide input on this and other techniques to achieve greater synchronicity, and to explain how the incremental costs and burdens of utilizing any of the techniques they propose compare with the benefits of greater accessibility to television programming. The Commission asks commenters to indicate whether VPDs, programmers or other entities should be responsible for implementing such technical solutions.

10. The Commission also seeks additional information about methods to provide captions that capture the entirety of the program's aural content, including, for example (1) sending the audio feed to the live captioner in a way that alerts the captioner that the program's end is imminent, so that the captioner can paraphrase or abbreviate the remaining text before the program cuts off; (2) fading out the program after its last scene to add a few seconds for the transition to the next program or commercial content; (3) providing advance delivery of the audio to captioners by a few seconds; and (4) allowing captions remaining at the end of a program's audio to be placed in a location on the screen during the subsequent advertisement (or program) in a manner that does not overlap with the captions on that advertisement or program. The Commission seeks comment on the feasibility, costs and other concerns associated with requiring the use of one or more of these techniques to ensure that captioning of live programming is complete. Are there other technologies or techniques in addition to these that the Commission should consider requiring for this purpose, and if so, what are their costs, benefits and technical feasibility? If the Commission adopts more specific latency requirements, should the Commission also identify any exceptions for circumstances where it is not possible to ensure completeness, and if so, what circumstances would those be? If the Commission requires any new methods to ensure that captions capture the entirety of the program's aural content, should VPDs, programmers or other entities be responsible for implementing these methods? Finally, the Commission asks commenters to explain how the incremental costs and burdens of utilizing any of the techniques they propose compare with the benefits of greater accessibility to television programming.

11. *Near-Live Programming.* In the *Report and Order,* the Commission identifies measures that are likely to result in an improved quality of captions for both near-live programming and rebroadcasts of live programming, including programmers providing an advance script, a near-completed program, or a live feed of the advance taping to a captioning agency, which the agency can then use to create a caption file that is later combined simultaneously with the program when it is aired. The Commission seeks comment on whether there are other measures in addition to these that can be used to improve the quality of near-live programming, as well as whether the Commission should require any

such measures. In this regard, the Commission requests input on the feasibility, costs and other concerns that would be associated with such requirements, and how those compare with the benefits of greater accessibility to television programming. The Commission asks commenters to indicate how to apportion responsibilities among VPDs, programmers or other entities for ensuring compliance with any measures adopted to improve the quality of near-live programming.

12. The Commission also seeks comment on whether its current definition of near-live programming is appropriate for purposes of the quality standards that the Commission adopted in the *Report and Order.* Commission rules pertaining to the IP captioning requirements currently define near-live programming as programming that is performed and recorded within 24 hours prior to when it is first aired on television. 47 CFR 79.4(a)(8). Consumer Groups recommend that the Commission ''presumptively limit 'near-live' programming to programming recorded and performed less than double its length prior to air—*e.g.,* two hours before the airing of a one-hour program—and deem 'pre-recorded' all programming recorded and performed more than double its length prior to air.'' Consumer Groups also recommend that the Commission require the use of offline captioning where doing so is achievable and that ''VPDs delivering near-live programming using real-time captions maintain records of the reason that offline captioning is not achievable.''

13. Although consumers recommend that VPDs be required to maintain such records, it may be more appropriate for programmers who are directly responsible for the delivery of programs with captions to bear this obligation. The Commission seeks comment on establishing such a requirement, as well as the other proposals made by the Consumer Groups. Is the Commission's current definition of near-live programming adequate to achieve the goal of promoting caption quality? Is it technically and financial feasible to caption programming performed less than 24 hours prior to air offline instead of in real-time? Is the Consumer Groups' proposal to limit near-live programming to programming recorded and performed less than double its length prior to air feasible? Does it better promote quality captioning? The Commission also seeks specific cost information on the impact of changing the definition of near-live programming for purposes of the Commission's caption quality rules.

14. *Live and Near-Live Program Re-feeds.* For live and near-live programs that were originally captioned using real-time captioning techniques but that are later re-aired on television after the effective date of the caption quality standards, the Commission asks whether the Commission should require the use of offline captioning or other measures that the Commission encouraged in the *Report and Order* to improve the quality of closed captioning. For example, should the Commission adopt a requirement to correct errors inadvertently made and timing lags that occurred when the program was first aired with real-time captions? Are there other measures that can be taken between the time of the first and subsequent showings that can help improve the caption viewer experience of such programs? If any rules were to be adopted requiring correction of captioning errors and timing lags on re-feeds of live and near-live programming, should such rules include threshold error rates or time lags before correction is required, and if so what should those thresholds be? The Commission asks commenters to provide feedback on the feasibility, costs and burdens that would be associated with such requirements to take certain measures to improve captions on re-feeds, and to compare these with the benefits of greater accessibility to television programming. The Commission also seeks input on the minimum interval needed between the original airing and the re-feed that would make such measures feasible. Finally, the Commission seeks comment on who should be responsible for implementing measures that will improve the accuracy, synchronicity, completeness and placement of captions on program re-feeds—VPDs, programmers, or other entities.

Use of Electronic Newsroom Technique by Non-Broadcast Channels

15. The Commission seeks comment on whether to apply the ENT requirements adopted for broadcasters in the *Report and Order* to non-broadcast networks. What effect, if any, will these proposals have on the availability of news and public affairs programming as well as other live programming on non-broadcast networks serving less than 50 percent of all homes subscribing to MVPD services? What are the benefits and disadvantages of these proposals for consumers seeking full access to news programming? The Commission also seeks other information that will help the Commission to assess the costs and benefits if it were to apply these proposed obligations on non-broadcast networks.

Compliance

16. *Technical Equipment Checks.* The Commission seeks comment on whether to establish specific intervals by which equipment checks codified in the *Report and Order* should take place and, if so, how frequently these checks should be performed to ensure that captioning is reliably delivered and video programming is fully accessible to consumers. The Commission seeks comment on the extent to which measures other than regular equipment checks, such as automated technologies that can be used to ensure that captions are passed through to consumers, should be permitted as alternative methodologies for monitoring. Commenters are asked to weigh the costs of these proposals as well as the costs of particular time intervals against the benefits of increasing reliable access to video programming by people who are deaf and hard of hearing.

17. *Resolution of Consumer Complaints.* The National Cable and Telecommunications Association (NCTA) proposes in its Best Practices that VPDs take the following actions designed to improve the prompt resolution of consumer's captioning concerns.

- *Consumer care awareness and training.* Maintain consumer support and escalation for captioning issues and provide targeted information or conduct training for customer care agents or television station personnel, as appropriate, to help with and assist in the resolution of caption quality and other captioning support issues.
- *Identification and remediation of recurring captioning issues.* Make reasonable efforts to identify consumer complaints received about captioning issues and periodically review these complaints to identify and resolve recurring captioning problems.

The Commission seeks comment on whether to adopt these practices noted above. The Commission asks commenters to address their experiences with the resolution of complaints filed directly with VPDs and whether adherence to the above practices would affect either positively or negatively the resolution of such complaints. The Commission asks commenters to also address the costs and benefits of requiring VPDs to implement these complaint handling practices.

18. Consumer Groups recommend that the Commission provide the public

with information about all captioning-related complaints as part of a Commission-wide ''dashboard.'' The Commission seeks comment on having the Commission make such information available to the public.

19. *Outages.* The Commission seeks comment on whether VPDs should be required to notify both consumers and the Consumer and Governmental Affairs Bureau (CGB) when captioning outages occur. Such outage reporting would only be required where there is an underlying obligation to provide captions, not where programming entities are exempt or otherwise excused from the captioning obligations. Given that some programming is exempt from the Commission's captioning rules, the Commission also seeks comment on whether and how consumers should be informed when captions are not required on particular programs. The Commission also seeks input on the duration and frequency of outages that should trigger any notification requirements. The Commission requests that parties provide comments on the practical and technical feasibility of notifying the public of a captioning outage on VPD Web sites and via periodic crawls on affected programs. For example, to what extent do the causes of outages impact the ability of the VPD to notify customers of the outage? Should VPDs be required to provide timely updates of service status that they are working on so that consumers are aware while watching the program? In this regard, the Commission also seeks comment about the length of time it generally takes to repair an outage after it has been discovered. Next, the Commission seeks comment on the appropriate passage of time after such outage commences before a VPD should be required to notify consumers and the Commission that an outage has occurred. VPDs should also comment on how they can become aware of captioning outages and how that will affect their ability to notify consumers. How do the costs and burdens of providing such notifications compare with the benefits of greater consumer access to information about captioning outages?

20. The Commission also seeks comment on whether the Commission should require the VPD to submit an outage report to CGB, on the contents and timing of such a report, and how the report should be filed. What minimum outage time should trigger the filing of a report? If outage reports are required, what information should be included in the report? For example, should it include a list of the VPD's affected programs, the geographic locations affected by the outage, the dates and times for the start and end of the outage, and the cause of the outage? If the outage lasts for more than one day, should the VPD be required to seek out other captioning sources while repairing equipment? How soon after the outage starts and ends should the report be filed with CGB? As an alternative to submitting outage reports, should VPDs be required to maintain records of their outages and for what length of time? How do the costs and burdens of filing captioning outage reports with CGB or keeping outage records compare with the benefits of achieving improved enforcement of the closed captioning obligations for consumers? In addition, the Commission notes that the obligation under § 79.2 of the Commission's rules to make emergency information visually accessible exists even if closed captioning is not available, and that the VPD may use scrolls, crawls, or other visual alternatives to fulfill that obligation. *See* 47 CFR 79.2. The Commission also notes that it does not intend for the notification and reporting requirements proposed herein to relieve VPDs of their obligations to prevent foreseeable and avoidable situations created by inaction or delay. Finally, the Commission asks interested parties to provide comment on how any responsibilities associated with the outage reporting obligations should be apportioned among VPDs, programmers, program owners, or other entities.

21. *Amending § 79.1(i)(3) of the Commission's Rules to Require All Contact Information Be Submitted to the VPD Registry.* Over the past three years, the Commission has found that the VPD Registry offers the most efficient and accurate means of collecting VPD contact information for the receipt and handling of immediate captioning concerns raised by consumers while they are watching television as well as for closed captioning complaints. The Commission proposes to amend its rules to require VPD contact information required under § 79.1(i)(1) and (2) of the Commission's rules to be submitted to the Commission directly to the VPD Registry through the web form method and seeks comment on this proposal. How do the costs of transitioning to a mandatory web form method of filing compare with the ease and accuracy of filing and benefits derived from such mandatory system?

22. *Treatment of Consumer Complaints by a VPD that Is Not the Responsible Party.* In the *2008 Closed Captioning Decision,* the Commission adopted § 79.1(g)(3) of the Commission's rules, 47 CFR 79.1(g)(3), which requires a VPD that receives a closed captioning complaint for a program for which it does not have closed captioning responsibility, to forward that complaint to the responsible entity within seven days of receiving the complaint, and then to notify the complainant that the complaint was forwarded. *2008 Closed Captioning Decision.* On June 10, 2009, Time Warner Cable (Time Warner) filed an *ex parte* letter identifying potential conflicts between the Commission's amended § 79.1(g)(3) and the obligations of cable companies to protect a subscriber's privacy under section 631(c)(1) of the Act. 47 U.S.C. 551(c)(1).

23. On December 11, 2009, the Commission released an Order temporarily staying the effective date of the forwarding provision of amended § 79.1(g)(3) of the Commission's rules. *See Closed Captioning of Video Programming,* CG Docket No. 05–231, Order Suspending Effective Date, (*2009 Suspension Order*); published at 75 FR 7369, February 19, 2010. Noting the potential conflict between amended § 79.1(g)(3) of the Commission's rules and sections 631(c) and 338(i)(4) of the Act (the latter creating the same prohibitions for satellite providers), the Commission found good cause to temporarily suspend the effective date for § 79.1(g)(3) of the Commission's rules, pending the completion of further rulemaking proceedings to determine how closed captioning complaints sent to the incorrect entity should be handled.

24. In order for a third party video programming provider to respond to a forwarded complaint, that complaint must include the complainant's name, address, telephone number and other personally identifiable information. Yet, sections 631(c) and 338(i)(4) of the Act appear to prohibit the forwarding of such information without the complainant's consent.

25. Accordingly, the Commission proposes amending § 79.1(g)(3) of the Commission's rules to require that within seven days after a VPD receives a complaint regarding programming of a broadcast television licensee or programming over which the VPD does not exercise editorial control, it be required to notify the complainant—using the complainant's preferred method of communication—of the appropriate party to whom the complaint should be sent, and give the complainant the option of either (1) asking the VPD to forward the complaint to the appropriate party electronically or in writing, or (2) submitting the complaint directly to the appropriate party on his or her own. In addition, the Commission proposes that

the VPD, after taking such action, inform the Commission that it has so notified the complainant by providing the Commission with copies of all written or electronic correspondence or a written description of all communications that were not either in electronic or written form. Under this proposal, if the VPD is asked by the complainant to forward the complaint to the appropriate party, the VPD would be required to do so within seven days of receiving such request, and if the VPD is not asked to forward the complaint, it would have no further responsibility. The Commission seeks comment on these proposals, including whether the second prong of the proposed requirement—requiring the VPD to notify the Commission that it has informed the complainant of the available options—would itself be a violation of sections 631(c)(1) and 338(i)(4) of the Act in instances where the consumer files his or her complaint with the VPD only and does not authorize the VPD to provide a copy to the Commission. If the Commission decides to require the VPD to notify it, the Commission seeks comment on the method a VPD must use to notify the Commission. How do the costs of forwarding complaints upon consumer request and notifying the Commission of actions taken compare with the benefits of providing a consumer-friendly way to get the complaints to the correct parties? Finally, the Commission requests commenters to submit any alternative proposals for amending § 79.1(g)(3) of the Commission's rules to avoid breaching the consumer protections contained in sections 631(c)(1) and 338(i)(4) of the Act.

Captioning Exemptions

26. *Elimination of the New Network Exemption.* The Commission seeks comment on the merits of continuing to allow all new networks to receive a four year exemption from the closed captioning rules. *See* 47 CFR 79.1(d)(9). Should newly launched networks build the costs of captioning into their business plans during the planning of their networks? If the Commission were to eliminate the new network exemption, should the Commission adopt a phase-in period to provide an opportunity for networks that are about to commence operations to plan for the required captioning? If so, what should this phase-in be? The Commission seeks comment on the costs and benefits of eliminating the new network exemption.

27. As an alternative, the Commission seeks comment on modifying the new network exemption. Currently, the exemption is for four years. Would a one or two year exemption be more appropriate? The Commission seeks comment on these or any other time periods that might be appropriate for a revised new network exemption. Even if the Commission retains the new network exemption, should the exemption apply only to new networks that have certain other indicia of a start-up network, *e.g.,* local or regional in nature, accessible by a small number of households, and ownership by a small business? If the Commission takes this approach, how does it define each of these or other proposed criteria for limiting the new network exemption? Alternatively, should networks with significant financial backing be deemed ineligible for the new network exemption? For example, should the exemption not apply to new networks that are owned, in whole or part, by one of the four major national broadcast networks or the top ten non-broadcast networks? How do the relative costs and burdens of requiring new networks to provide captioning under each of these alternatives compare with the benefits of greater accessibility to television programming?

28. If the Commission does retain this exemption, the Commission also seeks comment on the definition of ''network'' for purposes of the closed captioning rules. The exemption for new networks is based on the number of years that a programming network has been in operation rather than the number of subscribers. 47 CFR 79.1(d)(9). Further, this exemption applies to different types of networks—broadcast, non-broadcast, national, and regional. *1997 Closed Captioning Report and Order; see also Closed Captioning Reconsideration Order.* To begin with, the Commission seeks comment on the extent to which it should rely on other definitions of ''network,'' contained elsewhere in the Commission's rules. For example, § 73.3613(a)(1) of the Commission's rules defines ''network'' with respect to broadcast network affiliation agreements that must be filed with the Commission as ''any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states.'' 47 CFR 73.3613(a)(1); *see also* 47 CFR 76.55(f) (similar definition for purposes of the cable ''must carry'' rules). Alternatively, § 76.5(m) of the Commission's rules, pertaining to cable operators providing network non-duplication protection to television stations, defines a ''network program'' as ''. . . any program delivered simultaneously to more than one broadcast station regional or national, commercial or noncommercial.'' 47 CFR 76.5(m). The Commission seeks comment on whether these or a different definition of ''network'' would be appropriate for purposes of § 79.1(d)(9) of the Commission's rules, and whether to apply the same definition to broadcast and non-broadcast networks.

29. Next, the Commission notes that MVPDs serving U.S. subscribers increasingly offer video programming networks that were initially launched in foreign markets. In the event the Commission retains the new network exemption, the Commission seeks comment on whether a network that has operated in a foreign market and that moves to distribution or ''launches'' in the U.S., should be eligible for a new network exemption for a certain period of time after it launches in the U.S. and, if so, what the duration of that exemption should be. The Commission also seeks feedback on how to calculate the exemption period for such a new network, specifically, whether such network should be considered new as of the date that it begins distribution in the U.S., or whether its launch date should be considered the date that it initially began viewing in its originating country. The Commission asks commenters that believe the Commission should calculate an exemption upon moving the network's programming to the U.S. to explain why this exemption is necessary, given that such networks will have been in operation (and presumably generating revenues) and will have advance notice of U.S. captioning obligations prior to launching in the U.S. How do the costs and burdens of providing captioning on networks showing programming in the U.S. after first showing programming in foreign countries compare with the benefits of greater accessibility to television programming?

30. Last, in the event the Commission retains the new network exemption, the Commission seeks comment on the application of the new network exemption to networks created as the result of a merger of two or more existing networks. The Commission seeks comment on whether the original launch dates of networks that merged should be considered the applicable date for purposes of determining the exemption period for the merged entity. The Commission also seeks comment on which date should control in those situations where the merged entities had different original launch dates. Should the duration of the exemption be calculated based on the individual network that has been in existence for

the longest period of time? Is this approach appropriate because the new network exemption applies for a limited number of years—four years under the current rules so that no component part of the combined network would have the benefit of the exemption for longer than the maximum length of time provided by the rule? The Commission also seeks comment on whether the new network exemption should apply or be extended in the event of a restructuring of a network. Because the captioning rules were promulgated sixteen years ago and each network will have known about captioning requirements since its inception, has the network had sufficient time to integrate closed captioning into its production process and costs? The Commission seeks comment on this issue including its costs and benefits.

31. *Consumer Groups' 2011 Petition Requesting Elimination of Certain Self-Implementing Exemptions from the Captioning Rules.* On January 27, 2011, the Consumer Groups filed a joint petition for rulemaking (*2011 Petition*) seeking amendment to the Commission's captioning rules regarding an exclusion and several categorical self-implementing exemptions from the obligation to caption television programming. The Consumer Groups requested, in light of modern technology, the reduced costs of captioning, and other changed circumstances, that the Commission eliminate the exclusion for advertisements of five minutes duration or less, *see* 47 CFR 79.1(a)(1), and the self-implementing exemptions provided for the following types of programming: Late night programming, *see* 47 CFR 79.1(d)(5), locally produced and distributed non-news programming with no repeat value, *see* 47 CFR 79.1(d)(8), interstitials, promotional announcements, and public service announcements that are 10 minutes or less in duration, *see* 47 CFR 79.1(d)(6), and channels producing revenues under $3 million, *see* 47 CFR 79.1(d)(12). The Commission seeks comment on the Consumer Groups' proposal to eliminate the advertising exclusion and the specified self-implementing exemptions from the closed captioning rules. The Commission asks commenters to address the merits as well as the costs and benefits of each proposal put forth by the Consumer Groups.

Technical Standards for the Display of Closed Captions

32. In the *2000 DTV Closed Captioning Order,* the Commission adopted, with some modifications, section 9 of CEA–708, to provide guidelines for encoder and decoder manufacturers and caption providers to implement closed captioning services with digital television technology. *See Closed Captioning Requirements for Digital Television Receivers; Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility,* ET Docket No. 99–254, MM Docket No. 95–176, Report and Order, (*2000 DTV Closed Captioning Order*); published at 65 FR 58467, September 29, 2000; *see also* 47 CFR 79.102. The standards require DTV closed caption decoders to support certain advanced features, including different caption sizes, fonts, character background and foreground colors, and other similar features, to allow viewers to customize the display of closed captions on their televisions. The Commission now seeks comment on the experiences that caption users have had since adoption of these standards, including the extent that such consumers have succeeded in using these features to improve their television experience.

33. In addition to allowing users to control the appearance of captions, CEA–708 allows programmers more options for the display of captions, such as multiple windows, fonts, and styles. The Commission seeks information on current practices for such formatting of closed captions. To what extent was the Commission correct in its earlier expectation that CEA–708 captions would be provided and its prediction that ''programmers and caption providers'' would have incentives to provide CEA–708 captions? To what extent are VPDs, video programmers, captioners, or other entities each involved in the production process for formatting closed captions in a manner that provides the advanced features adopted by the Commission in the *2000 DTV Closed Captioning Order,* such as delivering captions in programmer-selected size, font, character background colors, and foreground colors of closed captions? What other entities are involved in the process, and how so? If VPDs, video programmers, captioners, or other entities involved in the production process are not formatting closed captions to use CEA–708 capabilities, why not? What action, if any can the Commission take to ensure the effective implementation of the CEA–708 capabilities so that television viewers who use captions can take full advantage of the capabilities this standard was intended to provide?

Caption Obstructions

34. Some caption viewers have raised concerns about closed captions being partially or completely blocked by other visual information, such as graphics, that appear on the screen. The Commission seeks comment on the extent to which on-screen visual changes or textual depictions, including, but not limited to, split screens, pop-on advertisements and promotions, credits, graphic overlays, or contact information, have caused a problem for caption viewers. To the extent that these problems exist, the Commission asks for comment on their causes and possible solutions.

New Technologies

35. *Captioning on 3D Television Programming.* To better understand current practices and capabilities with regard to closed captioning of 3D TV programming, the Commission seeks comment on the following:

- How are DTV manufacturers ensuring that captions continue to work when 3D TV programming is shown on television sets with 3D capability?
- Are there issues regarding the placement of captions in a 3D picture? What steps must manufacturers take to ensure that captioning in 3D TV programming is inserted and placed at an appropriate depth of field in the 3D image? Do user-selected changes to font size and location of the captions operate differently in a 3D image?
- With regard to television sets with 3D capability, will captions display properly when the user switches between 2D and 3D modes?
- How do the costs and burdens of providing closed captioning in 3D TV programming compare with the benefits of greater accessibility to television programming?

The Commission seeks input on any other matters that could affect the availability of closed captioning on 3D TV programming.

36. *Captioning on Ultra High Definition Television Programming.* To better understand current practices and capabilities with regard to closed captioning of Ultra HDTV programming, the Commission seeks comment on the following:

- How are Ultra HDTV manufacturers ensuring that captions continue to appear legibly when programming is shown on Ultra HDTV television sets?
- Do the standards for Ultra HDTV programming have the same capabilities for the transmission or pass-through of captions as HDTV and SDTV programming?
- Does the increased resolution present new challenges related to the

display of captions, particularly with respect to font size of the captions? If so, what are these new challenges, and how can they be addressed?

• How do the costs and burdens of additional requirements concerning closed captioning for Ultra HDTV programming compare with the benefits of greater accessibility to television programming?

The Commission seeks input on any other matters that could affect the availability of closed captioning on Ultra HDTV programming.

Initial Regulatory Flexibility Certification

37. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in document FCC 14–12 FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in document FCC 14–12. The Commission will send a copy of document FCC 14–12, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

38. In document FCC 14–12, the Commission seeks comment on (1) whether the Commission should impose some responsibilities for compliance with the Commission's closed captioning quality rules on video programmers and other entities; (2) whether the Commission should require specific measures to ensure program completeness and synchronicity for live and near-live programming and how the Commission should define near-live programming; (3) whether the Commission should require the use of offline captioning or other measures to achieve improved accuracy, synchronicity, placement and program completeness of captions prior to the re-airing of live and near-live programming first shown after the effective date of any such rule; (4) whether to apply the ENT requirements adopted for broadcasters to non-broadcast networks that use ENT and serve less than 50 percent of all MVPD homes to achieve greater accessibility to news programming; (5) whether to establish specific maximum intervals for technical equipment checks or to allow alternatives to such technical equipment checks; (6) whether to adopt a proposal for improving the prompt resolution of consumers' captioning concerns by VPDs, and whether to create a publicly available ''dashboard'' that would provide information about all captioning-related complaints; (7) whether to require that captioning outages be communicated to viewers in real-time and be reported to the Commission, consistent with the reporting requirements for other types of outages; (8) whether to require that all contact information already required to be submitted by VPDs to the Commission for the VPD registry be submitted using the Commission's web form system only; (9) how to amend the Commission's rules regarding the forwarding of consumer complaints to ensure subscriber privacy when the VPD receiving an informal complaint is not the responsible party; (10) whether to eliminate or retain the four-year exemption contained in § 79.1(d)(9) of the Commission's rules pertaining to new networks, and if retained, whether to reduce the term of the exemption or limit its availability based on certain criteria indicative of a start-up network, how to define network, how to calculate the start date of the network for purposes of the exemption, and whether and how the exemption should be applied to networks created as the result of a merger of two or more existing networks; (11) whether to eliminate or retain the exclusion contained in § 79.1(a)(1) of the Commission's rules for advertisements of five minutes duration or less and certain self-implementing exemptions contained in § 79.1(d) of the Commission's rules, including exemptions for late night programming, locally produced and distributed non-news programming with no repeat value, interstitials, promotional announcements, and public service announcements that are 10 minutes or less in duration, and channels producing revenues under $3 million; (12) current practices with regard to technical standards for the display of closed captioning; (13) the extent to which onscreen visual changes or textual depictions have caused a problem for caption viewers; and (14) current practices and capabilities with regard to closed captioning of 3D TV and ultra HDTV.

39. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

40. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA. Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' 5 U.S.C. 601(5). Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.''

41. *Cable Television Distribution Services.* These services have been included within the broad economic census category of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is all such firms having 1,500 or fewer employees. According to data from the U.S. Census Bureau for the year 2007, there were 3,188 Wired Telecommunications Carrier firms that operated for the entire year in 2007. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees.

42. *Cable Companies and Systems.* Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. 47 CFR 76.901(e). Industry data shows that there are 1,100 cable companies. Of this total, all but 10 incumbent cable companies are small. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. 47 CFR 76.901(c). Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more.

43. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for small cable system operators, which is ''a cable operator

that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' 47 U.S.C. 543(m)(2); *see also* 47 CFR 76.901(f) and nn.1–3. Based on available data, all but 10 incumbent cable operators are small under this size standard.

44. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Currently, only two entities, DIRECTV and DISH Network, provide DBS service, and neither company is a small business.

45. *Wireless Cable Systems—Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. Of the 67 auction winners, 61 met the definition of a small business, and of these 61 winners, 48 remain small business licensees. In addition, there are approximately 392 incumbent BRS licensees that are considered small entities. Accordingly, there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86 for the sale of 78 BRS licenses, and established three categories of small businesses: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years is a small business; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years is a very small business; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years is an entrepreneur. Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

46. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which is all such businesses having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 Wired Telecommunications Carrier firms that operated for the entire year in 2007. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees. In addition to Census Bureau data, the Commission's internal records indicate that as of September 2012, there are 2,239 active EBS licenses. The Commission estimates that of these 2,239 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

47. *Open Video Services.* Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is all such firms having 1,500 or fewer employees. According to U.S. Census data for 2007, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees.

48. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $35.5 million in annual receipts. The Commission has estimated the number of licensed full power commercial television stations to be 1,388. According to U.S. Census data for 2007, there were 2,076 television broadcasting establishments in 2007. Of these, 1,515 establishments had receipts under $10 million, and 561 had receipts of $10 million or more. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business control affiliations must be included. Because many of these stations may be held by large group owners, and the revenue figures on which the Commission's estimate is based does not include or aggregate revenues from control affiliates, the Commission's estimate likely overstates the number of small entities that might be affected by the Commission's action.

49. The Commission has estimated the number of licensed noncommercial educational (NCE) full power television stations to be 396. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 428 Class A television stations and 1,986 low power television stations (LPTV). Given the nature of these services, the Commission will presume that all Class A television and LPTV licensees qualify as small entities under the SBA definition.

50. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and is therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and the Commission's estimates of small businesses to which they apply may be over-inclusive to this extent.

51. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for ILECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small ILECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small ILECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

52. According to Census Bureau data for 2007, that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of less than 1000 employees, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307

carriers have reported that they are engaged in the provision of ILEC services. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.

53. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of less than 1000 employees, and 44 firms had had employment of 1,000 employees or more. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either CLEC services or CAP services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Seventy-two carriers have reported that they are Other Local Service Providers, and of the 72, 70 have 1,500 or fewer employees and 2 have more than 1,500 employees.

54. *Electric Power Distribution Companies.* These entities can provide video services over power lines (BPL). The SBA has developed a small business size standard for this category, which is all such firms having 1,000 or fewer employees. Census Bureau data for 2007 show that there were 1,174 firms that operated for the entire year in this category. Of these firms, 50 had 1,000 employees or more, and 1,124 had fewer than 1,000 employees.

55. *Cable and Other Subscription Programming.* These entities may be directly or indirectly affected by the Commission's action. The size standard established by the SBA for this business category is that annual receipts of $35.5 million or less determine that a business is small. According to 2007 Census Bureau data, there were 396 firms that were engaged in production of Cable and Other Subscription Programming. Of these, 349 had annual receipts below $25 million, 12 had annual receipts ranging from $25 million to $49,999,999, and 35 had annual receipts of $50 million or more.

56. *Motion Picture and Video Production.* These entities may be directly or indirectly affected by the Commission's action. The size standard established by the SBA for this business category is that annual receipts of $30 million or less determine that a business is small. According to 2007 Census Bureau data, there were 9,095 firms that were engaged in Motion Picture and Video Production. Of these, 8,995 had annual receipts of less than $25 million, 43 had annual receipts ranging from $25 million to $49,999,999, and 57 had annual receipts of $50 million or more.

57. *Internet Publishing and Broadcasting and Web Search Portals.* These entities may be directly or indirectly affected by the Commission's action. The SBA has deemed an Internet publisher or Internet broadcaster or the provider of a web search portal on the Internet to be small if it has fewer than 500 employees. Census Bureau data for 2007 show that there were 2,705 such firms that operated that year. Of those 2,705 firms, 2,682 (approximately 99%) had fewer than 500 employees, and 23 had 500 or more employees.

58. *Closed Captioning Services.* These entities may be directly or indirectly affected by the Commission's action. The SBA has developed two small business size standards that may be used for closed captioning services, which track the economic census categories, ''Teleproduction and Other Postproduction Services'' and ''Court Reporting and Stenotype Services.''

59. The relevant size standard for small businesses in Teleproduction and Other Postproduction Services is annual revenue of less than $29.5 million. Census Bureau data for 2007 indicate that there were 1,605 firms that operated in this category for the entire year. Of that number, 1,587 had annual receipts totaling less than $25 million, 9 had annual receipts ranging from $25 million to $49,999,999, and 9 had annual receipts of $50 million or more.

60. The size standard for small businesses in Court Reporting and Stenotype Services is annual revenue of less than $14 million. Census Bureau data for 2007 show that there were 2,706 firms that operated for the entire year. Of this total, 2,687 had annual receipts of under $10 million, 11 firms had annual receipts of $10 million to $24,999,999, and 8 had annual receipts of $25 million or more.

61. If the Commission were to adopt rules extending responsibilities for compliance with the Commission's closed captioning quality standards and other captioning requirements to video programmers or entities other than VPDs, such regulations would impose new compliance obligations and may impose additional reporting and recordkeeping obligations on video programmers, video programming owners, and other entities, including small entities.

62. If the Commission were to adopt rules requiring the use of certain measures to ensure program completeness and synchronicity of closed captions for live and near-live programming and changing the Commission's current definition of near-live programming for purposes of the quality standards adopted in the Order, such regulations would impose additional compliance obligations on VPDs, including small entities.

63. If the Commission were to adopt rules requiring the use of offline captioning or other measures to achieve improved accuracy, synchronicity, placement and program completeness of the captions prior to the re-airing of live and near-live programs, such regulations would impose additional compliance obligations on VPDs, including small entities.

64. If the Commission were to apply the ENT requirements adopted in the Report and Order for broadcasters to non-broadcast networks that use ENT and serve less than 50 percent of all MVPD homes, such regulations would impose new compliance obligations that may pose a financial burden on some non-broadcast networks, including smaller entities.

65. If the Commission were to establish maximum intervals for technical equipment checks, or to allow alternatives to such technical equipment checks, such regulations would impose additional compliance obligations on VPDs, including small entities.

66. If the Commission were to adopt the practices proposed by the NCTA for improving the prompt resolution of consumers' captioning concerns, including requiring VPDs to make reasonable efforts to identify consumer complaints received about captioning issues and periodically review those complaints to identify and resolve recurring captioning problems, VPDs, including small entities, would be subject to the recordkeeping requirements associated with the proposal.

67. If the Commission were to adopt rules requiring VPDs experiencing a captioning outage to notify consumers of the outage and file outage reports with the Commission, VPDs, including small entities, would be subject to the reporting and recordkeeping requirements associated with such outage reports.

68. If the Commission were to adopt a rule requiring that all contact information already required to be submitted by VPDs to the Commission for the VPD registry, *see* 47 CFR 79.1(i)(3), be submitted using the Commission's web form system, VPDs, including small entities, would not be subject to additional reporting and recordkeeping requirements, because they are already required to submit their contact information to the Commission. However, VPDs, including small entities, may be required to alter their reporting and recordkeeping associated with such submissions in order to comply with the rule.

69. If the Commission were to adopt a rule requiring a VPD, upon receipt of a complaint where the VPD is not the responsible party, to (1) notify the consumer within seven days; (2) offer the consumer a choice of either asking the VPD in writing to forward the complaint to the appropriate party or submitting the complaint directly to the appropriate party on his or her own; and (3) inform the Commission that it has so notified the complainant by providing the Commission with copies of all written or electronic correspondence or a written description of all communications that were not in electronic or written form, VPDs, including small entities, would be subject to the reporting and recordkeeping requirements associated with such complaint forwarding and notifications.

70. If the Commission were to eliminate the four-year exemption contained in § 79.1(d)(9) of its rules pertaining to new networks, 47 CFR 79.1(d)(9), or retain but alter the four-year exemption pertaining to new networks, it would impose new compliance obligations that may pose a financial burden on some smaller entities.

71. If the Commission were to eliminate the exclusion from the definition of video programming for advertisements of five minutes duration or less, 47 CFR 79.1(a)(1), and if the Commission were to eliminate certain self-executing exemptions contained in § 79.1(d) of its rules, including exemptions for late night programming, 47 CFR 79.1(d)(5), locally produced and distributed non-news programming with no repeat value, 47 CFR 79.1(d)(8), interstitials, promotional announcements, and public service announcements that are 10 minutes or less in duration, 47 CFR 79.1(d)(6), and channels producing revenues under $3 million, 47 CFR 79.1(d)(12), it would impose new compliance obligations that may pose a financial burden on VPDs, including small entities.

72. If the Commission were to take action to ensure the effective implementation of the technical standards for the display of closed captioning, it may impose additional compliance obligations on television manufacturers and VPDs, including small entities.

73. If the Commission were to adopt rules governing on-screen visual changes or textual depictions that obstruct closed captioning, it may impose additional compliance obligations on VPDs and video programmers, including small entities.

74. If the Commission were to adopt additional rules governing closed captioning of 3D television and Ultra HDTV, it may impose additional compliance obligations on television manufacturers and VPDs, including small entities.

75. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

76. First, the rules already allow small entities to take advantage of various possible exemptions: (1) The exemption for annual revenues under $3 million, 47 CFR 79.1(d)(12) (However, document FCC 14–12 seeks comment on whether to eliminate this exemption), (2) the exemption limiting the captioning requirement to 2% of annual gross revenues, 47 CFR 79.1(d)(11), and (3) the individual exemption process that allows the Commission to grant exemptions from the captioning rules when the provision of captions would impose an economic burden on a programming entity. 47 CFR 79.1(f).

77. If the Commission were to adopt rules extending responsibilities for compliance with the Commission's closed captioning requirements (including each of the proposals noted above) to video programmers and entities other than VPDs, such regulations would impose new compliance obligations and may impose additional reporting and recordkeeping obligations on video programmers, video programming owners, and other entities, including small entities. However, extending responsibilities for compliance with the Commission's closed captioning requirements to video programmers and other entities may benefit certain small entities through more efficient regulations that reach those entities with the greatest control over closed captioning quality. In addition, in determining whether to extend responsibility for compliance with the Commission's closed captioning requirements to video programmers or other entities involved in the production and delivery of video programming, the Commission will consider the costs of and benefits of such extension of responsibilities.

78. If the Commission were to adopt rules requiring the use of certain measures to ensure program completeness and synchronicity of closed captions for live and near-live programming and changing the Commission's current definition of near-live programming for purposes of the quality standards adopted in the Order, such regulations would impose additional compliance obligations on VPDs, video programmers, or other entities, including small entities. However, such regulations are less burdensome than the alternative of regulations imposing specific metrics for captioning synchronicity and program completeness. In addition, in determining whether to require certain techniques for improving the quality of real-time captioning of live programming, the Commission will consider the incremental costs and burdens of using any of the proposed techniques compared with the benefits of greater accessibility to television programming.

79. If the Commission were to adopt rules requiring the use of offline captioning or other measures to achieve improved accuracy, synchronicity, placement and program completeness of the captions prior to the re-airing of live and near-live programming first shown after the effective date of any such rule, such regulations would impose additional compliance obligations on VPDs, video programmers, or other entities including small entities. In determining whether to require certain techniques for improving the quality of captioning of live or near-live programming that is later re-aired, the Commission will consider the costs and burdens of using any of the proposed techniques compared with the benefits of greater accessibility to television programming.

80. If the Commission were to apply the ENT requirements adopted in the Order to non-broadcast networks that

use ENT and serve less than 50 percent of all MVPD homes to ensure greater accessibility to news programming, such regulations would impose new compliance obligations that may pose a financial burden on some non-broadcast networks, including small entities. However, the Commission's proposal to apply the ENT requirements to non-broadcast channels serving less than 50 percent of all MVPD homes provides a less burdensome alternative to a phase-out of ENT, which would impose higher burdens and costs on small entities under the current rules. In addition, networks with small budgets would still be able to take advantage of various possible exemptions: (1) The exemption for annual revenues under $3 million, 47 CFR 79.1(d)(12) (document FCC 14–12 also seeks comment on whether to eliminate the exemption for annual revenues under $3 million), (2) the exemption limiting the captioning requirement to 2% of annual gross revenues, 47 CFR 79.1(d)(11), and (3) the individual exemption process that allows the Commission to grant exemptions from the captioning rules when the provision of captions would impose an economic burden on a programming entity. 47 CFR 79.1(f).

81. If the Commission were establish maximum intervals for technical equipment checks, or other measures that can be used to ensure that captions are passed on to consumers, such regulations would impose additional compliance obligations on VPDs, including small entities. In determining whether to require intervals for such checks or other measures, the Commission will consider the costs and burdens of these requirements compared with the value of this maintenance to greater accessibility to television programming.

82. If the Commission were to adopt the practices proposed by NCTA for improving the prompt resolution of consumers' captioning concerns, VPDs, including small entities, would be subject to the recordkeeping requirements associated with the proposal. However, the proposal would impose no reporting requirements and does not require specific measures for identifying and reviewing consumer complaints related to closed captioning problems. In addition, such a requirement may benefit small entities because it may reduce consumer complaints regarding captioning, because the VPDs may be addressing problems earlier as a result of these procedures.

83. If the Commission were to adopt rules requiring VPDs experiencing a captioning outage to notify consumers in real time of the outage and file outage reports with the Commission, VPDs, including small entities, would be subject to the reporting and recordkeeping requirements associated with such outage reports. Adopting such a requirement would be in the public interest because it would provide greater consumer access to information about captioning outages. In addition, such a requirement may benefit small entities because it may reduce consumer complaints regarding captioning outages, because the outage notifications would inform consumers that the VPD is aware of and addressing the problem.

84. If the Commission were to adopt a rule requiring that all contact information already required to be submitted by VPDs to the Commission for the VPD registry, *see* 47 CFR 79.1(i)(3), be submitted using the Commission's web form system only, VPDs, including small entities, would not be subject to additional reporting and recordkeeping requirements, since they are already required to submit their contact information to the Commission. However, VPDs, including small entities, may be required to alter their reporting and recordkeeping associated with such submissions in order to comply with the rule. In determining whether to require VPDs to submit their contact information via the web form, the Commission will consider the costs of transitioning to a mandatory web form method of filing, compared with the ease and accuracy of filing and the benefits derived from a mandatory system.

85. If the Commission were to adopt a rule requiring a VPD, upon receipt of a complaint where the VPD is not the responsible party, to (1) notify the consumer within seven days; (2) offer the consumer a choice of either asking the VPD in writing to forward the complaint to the appropriate party or submitting the complaint directly to the appropriate party on his or her own; and (3) inform the Commission that it has so notified the complainant by providing the Commission with copies of all written or electronic correspondence or a written description of all communications that were not in electronic or written form, VPDs, including small entities, would be subject to the reporting and recordkeeping requirements associated with such complaint forwarding and notifications. This rule is intended to allow for the forwarding of consumer complaints as required by § 79.1(g)(3) of the Commission's rules without violating the consumer protections contained in sections 631(c)(1) and 338(i)(4) of the Act. Nevertheless, in determining whether to adopt this rule, the Commission will consider the costs of forwarding complaints upon consumer request and notifying the Commission of actions taken compared to the benefits of providing a consumer-friendly way to get the complaints to the correct parties.

86. If the Commission were to eliminate the four-year exemption contained in § 79.1(d)(9) of the Commission's rules pertaining to new networks, or retain but alter the four-year exemption pertaining to new networks, it would impose new compliance obligations that may pose a financial burden on some small entities. However, under the current rules, networks with small budgets would still be able to take advantage of various possible exemptions: (1) The exemption for annual revenues under $3 million, 47 CFR 79.1(d)(12) (document FCC 14–12 also seeks comment on whether to eliminate the exemption for annual revenues under $3 million), (2) the exemption limiting the captioning requirement to 2% of annual gross revenues, 47 CFR 79.1(d)(11), and (3) the individual exemption process that allows the Commission to grant exemptions from the captioning rules when the provision of captions would impose an economic burden on a programming entity. 47 CFR 79.1(f).

87. If the Commission were to eliminate the exclusion from the definition of video programming for advertisements of five minutes duration or less, 47 CFR 79.1(a)(1), and if the Commission were to eliminate certain self-executing exemptions contained in § 79.1(d) of its rules, including exemptions for late night programming, 47 CFR 79.1(d)(5), locally produced and distributed non-news programming with no repeat value, 47 CFR 79.1(d)(8), interstitials, promotional announcements, and public service announcements that are 10 minutes or less in duration, 47 CFR 79.1(d)(6), and channels producing revenues under $3 million, 47 CFR 79.1(d)(12), it would impose new compliance obligations that may pose a financial burden on VPDs, including small entities. However, under the current rules, entities with small budgets would still be able to take advantage of other possible exemptions: (1) The exemption limiting the captioning requirement to 2% of annual gross revenues, 47 CFR 79.1(d)(11), and (2) the individual exemption process that allows the Commission to grant exemptions from the captioning rules when the provision of captions would impose an economic burden on a programming entity. 47 CFR 79.1(f).

88. If the Commission were to take action to ensure the effective implementation of the technical standards for the display of closed captioning, it may impose additional compliance obligations on television manufacturers and VPDs, including small entities. In determining whether to require any other practices governing technical standards for the display of closed captioning, the Commission will consider the costs and burdens of such practices compared with the benefits of greater accessibility to television programming.

89. If the Commission were to adopt rules governing on-screen visual changes or textual depictions that obstruct closed captioning, it may impose additional compliance obligations on VPDs and video programmers, including small entities. In determining whether to require any other practices governing on-screen visual changes or textual depictions that obstruct closed captioning, the Commission will consider the costs and burdens of such practices compared with the benefits of greater accessibility to television programming.

90. If the Commission were to adopt rules governing display of closed captioning, closed captioning of 3D television or Ultra HDTV programming, it may impose additional compliance obligations on television manufacturers and VPDs, including small entities. However, VPDs are already subject to rules governing the display of closed captioning and are required to reliably encode, transport, and render closed captions on 3D and Ultra HDTV video programming in accordance with Commission rules. Also, in accordance with the Commission's captioning rules, such VPDs and providers must permit the pass through or rendering of closed captions in a manner that will allow viewers to exercise control over various display features and to activate and deactivate captions when video programming is played back on television receivers with 3D or Ultra HDTV capability. Finally, interconnection mechanisms and standards for 3D and Ultra HDTV video source devices must be capable of conveying from the source device to the consumer equipment the information necessary to permit or render the display of closed captions. In determining whether to require any other practices for the display of closed captioning or captioning 3D television or Ultra HDTV, the Commission will consider the costs and burdens of such practices compared with the benefits of greater accessibility to television programming.

91. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

Ordering Clauses

Pursuant to sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 613, document FCC 14–12 *is adopted.*

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 14–12 including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–06755 Filed 3–26–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2014–0007; FXES11130900000–145–FF09E42000]

RIN 1018–AY82

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Downlist the Arroyo Toad (Anaxyrus californicus), and a Proposed Rule To Reclassify the Arroyo Toad as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to reclassify the arroyo toad (*Anaxyrus californicus*) as threatened under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that reclassifying the arroyo toad as threatened is warranted, and, therefore, we propose to reclassify the arroyo toad as threatened under the Act. We are seeking information and comments from the public regarding this proposed rule.

DATES: We will accept comments received or postmarked on or before May 27, 2014. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by May 12, 2014.

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2014–0007, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2014–0007; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

Document availability: A copy of the Species Report referenced throughout this document can be viewed at *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=D020,* at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2014–0007, or at the Ventura Fish and Wildlife Office's Web site at *http://www.fws.gov/ventura/.*

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766; facsimile 805–644–3958. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of Regulatory Action. In December 2011, we received a petition to reclassify the arroyo toad from endangered to threatened, based on analysis and recommendations contained in our August 2009 5-year status review of the species. On June 4, 2012, we published a 90-day finding that the petition presented substantial information indicating that reclassifying the arroyo toad may be warranted (77 FR 32922) and initiated a status review. After review of all available scientific and commercial information, we find that the petitioned action is warranted and propose to reclassify the arroyo toad

from an endangered species to a threatened species on the Federal List of Endangered and Threatened Wildlife. This document constitutes our 12-month finding in response to the petition to reclassify the arroyo toad from endangered to threatened.

The basis for our action. Under the Act, we can determine that a species is an endangered species or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider whether or not the species is an endangered species or threatened species because of the same factors when we consider reclassifying or delisting a species.

We have determined that there are still significant threats impacting the arroyo toad currently and into the future, particularly operation of dams and water diversions (Factors A and E); urban development (Factors A and E); introduced predator species (Factors A and C); and drought (Factors A and E). However, despite the existence of these ongoing threats, we conclude that the overall magnitude of threats impacting the arroyo toad has decreased since the time of listing, due in part to implementation of conservation and management actions. Furthermore, we find that the intent of the recovery criteria for downlisting of the arroyo toad has been met, and that the arroyo toad now fits the definition of a threatened rather than an endangered species.

Information Requested

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available, and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, tribes, the scientific community, industry, or other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Reasons why we should or should not reclassify the arroyo toad under the Act (16 U.S.C. 1531 *et seq.*).

(2) New biological or other relevant data concerning any threat (or lack thereof) to this species.

(3) New information concerning the distribution and population size or trends of this species.

(4) New information on the current or planned activities within the range of the arroyo toad that may adversely affect or benefit the species.

(5) New information and data on the projected and reasonably likely impacts to the arroyo toad or its habitat associated with climate change.

(6) New information on threats or impacts to the arroyo toad in the Mexico portion of its range.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. We must receive your request within 45 days after the date of this **Federal Register** publication. Send your request to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (50 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. A thorough review of information that we relied on in preparing this proposed rule—including information on taxonomy, life history, ecology, population distribution and abundance, and potential threats—is presented in the arroyo toad Species Report (Service 2013) available at *http://www.regulations.gov* (Docket Number FWS–R8–ES–2014–0007). The purpose of peer review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. The peer reviewers will conduct assessments of the proposed rule, and the specific assumptions and conclusions regarding the proposed downlisting. These assessments will be completed during the public comment period.

We will consider all comments and information we receive during the comment period on this proposed rule as we prepare the final determination. Accordingly, the final decision may differ from this proposal.

Previous Federal Action

We proposed to list the arroyo toad as an endangered species under the Act on August 3, 1993 (58 FR 41231), based primarily on threats from urban development, agricultural conversion, construction of new dams, roads and road maintenance, recreational activities, introduced predator species, and drought. We published a final rule listing the arroyo toad as an endangered species on December 16, 1994 (59 FR 64859). We published a recovery plan for the arroyo toad in 1999 (Service 1999). Critical habitat was designated in 2001 (66 FR 9414, February 7, 2001) and revised in 2005 (70 FR 19562, April 13, 2005) and 2011 (76 FR 7246, February 9, 2011).

Under the Act, we maintain the Lists of Endangered and Threatened Wildlife and Plants at 50 CFR 17.11 (for animals) and 17.12 (for plants) (Lists). We amend the Lists by publishing final rules in the **Federal Register**. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Section 4(c)(2)(B) requires that we determine: (1) Whether a

species no longer meets the definition of endangered or threatened and should be removed from the Lists (delisted), (2) whether a species listed as endangered more properly meets the definition of threatened and should be reclassified to threatened (downlisted), or (3) whether a species listed as threatened more properly meets the definition of endangered and should be reclassified to endangered (uplisted). In accordance with 50 CFR 424.11(d), using the best scientific and commercial data available, we will consider a species for delisting only if the data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered recovered; or (3) the original data available when the species was listed, or the interpretation of such data, were in error.

We published a notice announcing active review and requested public comments concerning the status of the arroyo toad under section 4(c)(2) of the Act on March 5, 2008 (73 FR 11945). We notified the public of completion of the 5-year review on May 21, 2010 (75 FR 28636). The 5-year review, completed on August 17, 2009 (Service 2009), resulted in a recommendation to change the status of the species from endangered to threatened. A copy of the 2009 5-year review for the arroyo toad is available on the Service's Environmental Conservation Online System (*http://ecos.fws.gov/docs/five_year_review/doc2592.pdf*).

On December 21, 2011, we received a petition dated December 19, 2011, from the Pacific Legal Foundation, requesting the Service to delist the Inyo California towhee (*Pipilo crissalis eremophilus*), and to reclassify from endangered to threatened the arroyo toad *(Anaxyrus californicus),* Modoc sucker (*Catostomus microps*), *Eriodictyon altissimum* (Indian Knob mountainbalm), *Astragalus jaegerianus* (Lane Mountain milk-vetch), and *Hesperocyparis abramsiana* (Santa Cruz cypress). The petition was based on the analysis and recommendations contained in the most recent 5-year reviews for these taxa. On June 4, 2012 (77 FR 32922), we published in the **Federal Register** a 90-day finding for the 2011 petition to reclassify these six taxa. In our 90-day finding, we determined the 2011 petition provided substantial information indicating the petitioned actions may be warranted, and we initiated status reviews for each species.

In April 2013, we received a complaint on our failure to complete 12-month findings on the above-mentioned species, including the arroyo toad (Case No. 2:13–cv–00800–GEB–AC; April 24, 2013). In August 2013, we settled that case by committing to a schedule for completing all of the 12-month findings; the settlement date for completion of the arroyo toad finding is March 21, 2014. This proposed downlisting rule constitutes the 12-month finding on the 2011 petition to reclassify the arroyo toad and our latest 5-year status review for the species. We are addressing the 12-month findings for the other petitioned species separately.

Background

A scientific analysis of the status of the species is presented in detail within the arroyo toad Species Report (Service 2013, entire), which is available at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2014–0007. The Species Report was prepared by Service biologists to provide thorough discussion of the species ecology, biological needs, and analysis of the threats that may be impacting the species. The Species Report includes discussion of the following: life history; taxonomy; habitat requirements; species range, distribution, and abundance; threats analysis; and progress towards recovery. This detailed information is summarized in the following paragraphs of this **BACKGROUND** section and the Summary of Factors Affecting the Species section.

The arroyo toad is a small, stocky, warty toad that is about 2 to 3 inches (in) (5.1 to 7.6 centimeters (cm)) in length (Stebbins 2003, p. 212). The skin of this toad is light olive green, gray, or light brown in color with a light-colored stripe shaped like a ''V'' across the head and eyelids. The belly is white or buff colored, usually without spots. Arroyo toads are found in low-gradient, medium-to-large streams and rivers with intermittent and perennial flow in coastal and desert drainages in central and southern California and Baja California, Mexico. Arroyo toads occupy aquatic, riparian, and upland habitats in the remaining suitable drainages within its range. Arroyo toads are breeding habitat specialists and need slow-moving streams that are composed of sandy soils with sandy streamside terraces (Sweet 1992, pp. 23–28). Reproduction is dependent upon the availability of very shallow, still, or low-flow pools in which breeding, egg-laying, and tadpole development occur. Suitable habitat for the arroyo toad is created and maintained by periodic flooding and scouring that modify stream channels, redistribute channel sediments, and alter pool location and form. These habitat requirements are largely dependent upon natural hydrological cycles and scouring events (Madden-Smith *et al.* 2003, p. 3).

At the time the species was listed, it was classified as a subspecies (*Bufo microscaphus californicus*) of the southwestern toad (*B. microscaphus*). However, the taxonomy of the arroyo toad was reexamined (Gergus 1998, entire), and as a result, in 2001, we formally changed the name on the List of Endangered and Threatened Wildlife to *B. californicus* (66 FR 9414, February 7, 2001). Based on a phylogenetic analysis of comparative anatomical and molecular genetic data for amphibians (Frost *et al.* 2006, p. 363) that was accepted by the scientific community, we again formally changed the name on the List to *Anaxyrus californicus* in 2011 (76 FR 7246, February 9, 2011).

The arroyo toad was once relatively abundant in the coastal portions of central and southern California. At the time of listing, arroyo toads were known to occur in 22 river basins from the upper Salinas River system in Monterey and San Luis Obispo Counties; south through the Santa Maria and Santa Ynez River basins in Santa Barbara County; the Santa Clara River basin in Ventura County; the Los Angeles River basin in Los Angeles County; river basins of Orange, Riverside, and San Diego Counties; and south to the Arroyo San Simeon system in Baja California, Mexico (Sweet 1992, p. 18; Service 1999, p. 12; Service 2013, Map 1). Prior to the time of listing, Jennings and Hayes (1994, p. 57) documented a decline of 76 percent of arroyo toad populations throughout the species' range due to loss of habitat and hydrological alterations to stream systems as a result of dam construction and flood control. This figure was based on studies done in the early 1990s by Sam Sweet (Jennings and Hayes 1994, p. 57) that addressed the natural history and status of arroyo toad populations on a portion of the species' range on the Los Padres National Forest.

Though arroyo toads have been extirpated from some rivers and streams within river basins that they occupied at the time of listing, the number of areas known to be occupied by arroyo toads has increased since the time of listing, mostly due to increased survey efforts. Although Jennings and Hayes (1994, p. 57) estimated that arroyo toads had been eliminated from 76 percent of their historical range prior to the time of listing, subsequent discoveries of new localities and remnant populations reduce this estimate to 65 percent (Lanoo 2005, p. 4). We now consider there to be a total of 35 river basins that support arroyo toads with 25 in the United States and 10 in Mexico; arroyo

toads are still extant in all 22 river basins occupied at the time of listing. Currently, arroyo toads are limited to isolated populations primarily in the headwaters of coastal streams along the central and southern coast of California and southward to Rio Santa Maria near San Quintin in northwestern Baja California, Mexico (Lovich 2009, p. 62).

The 1999 recovery plan divided the range of the arroyo toad into three recovery units: the Northern Recovery Unit, the Southern Recovery Unit, and the Desert Recovery Unit. The recovery plan did not address river basins in Baja California, Mexico. In the Species Report, we analyzed threats by river basin, grouping those basins by recovery unit. We also considered all known occurrences in Baja California, Mexico. Based on new distribution information and correction of some locality records now known to be in error (Ervin *et al.* 2013, pp. 197–204), we updated the river basins in each recovery unit for the purposes of our analysis (Service 2013, p. 15, Map 1, Table 1).

The Northern Recovery Unit consists of the following five river basins: Salinas, Santa Maria, Santa Ynez, Santa Clara, and Los Angeles (Service 1999, Table 1; Service 2013, Table 1). The Southern Recovery Unit consists of the following river 18 basins: Lower Santa Ana, Upper Santa Ana, San Jacinto, San Juan Creek, San Mateo Creek, San Onofre Creek, Lower Santa Margarita, Upper Santa Margarita, Murrieta Creek, Lower and Middle San Luis Rey, Upper San Luis Rey, Lower Santa Ysabel Creek, Upper Santa Ysabel Creek, Upper San Diego, Lower Sweetwater, Upper Sweetwater, Lower Cottonwood Creek, and Upper Cottonwood Creek (Service 1999, Table 1; Service 2013, Table 1). The Desert Recovery Unit consists of the following two river basins: Antelope-Fremont and Mojave (Service 1999, Table 1; Service 2013, Table 1). Baja California includes the following 10 river basins: Rio Las Palmas, Rio Guadalupe, Arroyo San Carlos, Rio El Zorillo, Rio Santo Tomas, Rio San Vincente, Rio San Rafael, Rio San Telmo, Rio Santo Domingo, and Rio Santa Maria. Of those 25 river basins in the United States and an additional 10 river basins in Baja California, Mexico, 28 contain arroyo toad occurrences that are extant or presumed to be extant, and many of these contain multiple populations of arroyo toads in different creeks and rivers (Service 2013, Table 1). Identification of the river basins containing occurrences that are known to be or presumed to be extant is based solely on the existence of reliable surveys or sightings of arroyo toads in recent years (Service 2013, p. 18, Table 1). The statuses of the remaining seven occurrences are unknown, because no surveys have been conducted in the past 6 years.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species because of any one or a combination of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or human-made factors affecting its continued existence. A species may be reclassified on the same basis.

Determining whether the status of a species has improved to the point that it can be downlisted requires consideration of whether the species is endangered or threatened because of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is an ''endangered species'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a ''threatened species'' if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The word ''range'' in the significant portion of its range phrase refers to the range in which the species currently exists, and the word ''significant'' refers to the value of that portion of the range being considered to the conservation of the species. The ''foreseeable future'' is the period of time over which events or effects reasonably can or should be anticipated, or trends extrapolated. For the purposes of this analysis, we first evaluate the status of the species throughout all its range, then consider whether the species is in danger of extinction or likely to become so in any significant portion of its range.

At the time of listing, the primary threats to the arroyo toad were urban development, agricultural conversion, construction of new dams, roads and road maintenance, recreational activities, introduced predator species, and drought (59 FR 64859; December 16, 1994). Other threats identified in 1994 included livestock grazing, mining and prospecting, and alteration of the natural fire regime (59 FR 64859).

Most of the threats identified at the time of listing are still impacting the arroyo toad and its habitat; however, in many cases, the way in which they impact the species has changed. Some new threats have also been identified. Current or potential future threats to the arroyo toad include urban development (Factors A and E), agriculture (Factors A and E), operation of dams and water diversions (Factors A and E), mining and prospecting (Factors A and E), livestock grazing (Factors A and E), roads and road maintenance (Factors A and E), recreation (Factors A and E), invasive, nonnative plants (Factors A and E), introduced predator species (Factors A and C), drought (Factors A and E), fire and fire suppression (Factors A and E), and effects of climate change (Factors A and E) (Service 2013, pp. 32–87). Threats identified at the time of listing that have been found either to be of no concern, insignificant concern, or negligible at this time include construction of new dams (Factor A), collection for recreational or scientific purposes (Factor B), and disease (Factor C); the best available scientific and commercial information indicates that these are not threats at this time (Service 2013, p. 28). Inadequacy of existing regulatory mechanisms (Factor D) was not considered to be a threat at the time of listing, and is not considered to be a threat now (Service 2013, pp. 28–29).

In the Species Report, we examined the scope and severity of threats. The severity of threats measures the degree of impact to arroyo toad populations or habitat. The scope of the threat considers the proportion of arroyo toad occurrences that are reasonably expected to be affected by a threat. The interaction between scope and severity provided the overall impact of the threat, which we classified as very high, high, medium, or low. A very high threat impact was one with extreme severity and pervasive scope; a high threat impact had large scope and extreme or serious severity; a medium threat impact had a more restricted

scope and high severity, or more widespread scope and moderate severity; and a low threat impact had either small or restricted scope and a slight or moderate severity (Service 2013, pp. 29–31).

The following sections provide a summary of the current threats impacting the arroyo toad.

Urban Development

At the time of listing, urban development caused both permanent loss of riparian wetlands and ongoing degradation of riparian habitat that supported arroyo toads. At that time, habitat loss and degradation were extensive in rivers of southern California as a result of agricultural and urban development (Griffin *et al.* 1999, p. 5). Since then, conservation measures have reduced the amount and scale of direct habitat loss due to urban development, and many river basins have land protected from development by State, Federal and local agencies, including four river basins in Mexico that occur in part within the boundaries of national parks. However, not all land is protected, and urban development impacts are expected to continue. Today, 23 of the 35 river basins occupied by arroyo toads are affected by both direct and indirect effects of urban development, including 18 river basins in the United States (Service 2013, pp. 34–35).

Permanent loss and alteration of arroyo toad habitat is caused by activities that include: construction and maintenance of infrastructure; alteration of stream dynamics; declines in water quality; stabilization of stream banks; and maintenance of flood, drainage, and water quality protection features. In addition to the loss and alteration of habitat, construction activities can directly kill, injure, or limit foraging and breeding by arroyo toads by excluding arroyo toads from portions of their habitat that are present within a development project area (Campbell *et al.* 1996, p. 15; Service 1999, p. 40; Service 2013, pp. 34, 80–81).

Though losses of small amounts of habitat due to urban development still occur, urban development more commonly impacts arroyo toads and their habitat through alteration of stream dynamics and water quality. Stream dynamics can be altered by both groundwater extraction and increased surface flows. Groundwater extraction related to urban development reduces the amount of surface flow available for creeks and rivers. This reduction in water can be detrimental to arroyo toads because they require breeding pools that persist for at least 2 months in the summer for larval development and tadpole metamorphosis (Campbell *et al.* 1996, p. 6). Extraction can also lower groundwater levels below the depth that streamside or wetland vegetation needs to survive, resulting in a loss of riparian vegetation and habitat (USGS 2012). Production from groundwater supplies in San Diego County is anticipated to increase 75 percent by 2015 (CEC 2009, p. 19). Currently, the City of San Diego is considering groundwater extraction in San Pasqual Valley (lower Santa Ysabel Creek) (Brown, USGS, pers. comm. 2012).

Arroyo toads and their habitat can also be impacted by increased surface flows due to urban runoff. Generally, increases in surface runoff, particularly during large storm events, can affect arroyo toads by disrupting breeding and by sedimentation which buries eggs or displaces adults and juveniles (Service 2013b, p. 17). Increased flows in streams due to urban runoff can also lead to changes in the invertebrate communities that may lead to decreased survival of arroyo toad tadpoles due to competition or predation, and may reduce the food supply for post-metamorphic toads (Service 1999, p. 41). Alterations to surface flows resulting from groundwater extraction or increased surface runoff can impact all stages of arroyo toad life history and alter breeding habitat.

Urban runoff from storm events or from regularly occurring irrigation of urban areas may also decrease the water quality in streams and rivers that support arroyo toads. Runoff from roads, residential housing, and golf courses often contains chemicals that are toxic to wildlife (for example, car fluids, pesticides, and herbicides) (Service 1999, p. 41). Arroyo toads are exposed to hazardous materials by absorbing them through their skin from the water or contaminated vegetation, or by ingesting them from contaminated vegetation, prey species, or water. However, the life-history characteristics of arroyo toads may decrease the impacts of contaminated runoff. Sweet (1992, pp. 54–57) observed that arroyo toads almost never breed in pools that are isolated from the flowing channel and where contaminants would be found in highest concentrations. Arroyo toads may use side channels and washouts as long as there is some flow through them, but they are abandoned as soon as this flow ceases (Lanoo 2005, p. 2). Therefore, the arroyo toad's sensitivity to aquatic contaminants may be decreased.

Despite these impacts, the amount of urban development resulting in the destruction and removal of arroyo toad habitat has largely decreased since the time of listing, as much of the undeveloped arroyo toad habitat is now conserved in protected areas. Of the 25 river basins that support arroyo toads and their habitat in the United States, 20 contain land owned and managed in part by State or Federal agencies (Service 2013, Table 1). The impacts that do remain from urban development on private or locally owned land have been reduced through conservation measures. These additional measures have been put in place on privately and locally owned land at 10 of 18 river basins in the United States impacted by urban development: 1 river basin in the Northern Recovery Unit, and 9 river basins in the Southern Recovery Unit.

In the Northern Recovery Unit, a proposed East Area 1 project in Santa Paula (EDC 2012) and current and future development plans for Newhall Ranch have the potential to reduce or eliminate much of the suitable arroyo toad habitat in this area; however, to reduce the impacts associated with urban development, Newhall Ranch developed a Natural Resource Management Plan (NRMP) for the Santa Clara River. The plan provides measures designed to protect, restore, monitor, manage, and enhance habitat for multiple species, including the arroyo toad (EDC 2012, entire). Of particular importance to the conservation of the arroyo toad and its habitat are the substantial conservation easements that are included in the NRMP, which, when completed, will protect almost all arroyo toad breeding habitat and riparian habitat within the Newhall Ranch development. At the present time, approximately 1,011 ac (409 ha) of Newhall Ranch lands have been conveyed to the California Department of Fish and Wildlife (CDFW), and additional easements are awaiting approval.

Since the time of listing, multiple habitat conservation plans (HCPs) have been implemented in the Southern Recovery Unit to provide protection to the arroyo toad and decrease habitat loss and alteration due to urbanization. These HCPs are responsible for placing land within seven river basins into reserves; for example, all arroyo toad habitat within the Orange County Central-Coastal Natural Community Conservation Plan (NCCP) (Lower Santa Ana River Basin) is within reserves. Within the Orange County Central-Coastal NCCP reserves, monitoring and management related to the arroyo toad have included reserve-wide herpetofauna surveys conducted from 1997 through 2001 and ongoing control of invasive, nonnative vegetation in the upland environment. Development of

adaptive management plans for the arroyo toad within these and other dedicated reserves within HCPs is being planned for the future, but is not yet in place. Additional land within five river basins has been acquired by Federal, State and local government. These conservation measures have resulted in land acquisition in 9 of the 14 river basins in the Southern Recovery Unit impacted by urban development.

Very limited information is available on the effects of urban development in Mexico. We are aware that urban development is occurring at five river basins within Mexico (Lovich 2009, pp. 77, 85); however, the magnitude of impacts at these locations from urban development is unclear.

Urban development continues to impact the arroyo toad throughout its range. Though altered flow regimes and other indirect effects from development continue to impact habitat that supports the arroyo toad, the amount of direct destruction and removal of habitat has decreased. This decrease in the severity of direct habitat loss from urban development since the time of listing is due to the amount of land within river basins in the United States that has been added to reserves though local HCPs and that overall is managed by state or Federal agencies (for more details on land ownership, see Table 1 in Service 2013). The reduction in the threat of urban development is also due to conservation measures that have been put in place on private and locally owned land to reduce, eliminate, or mitigate for the existing and future effects of urban development. Although urban development continues to pose a threat to the continued existence of the arroyo toad, the magnitude of this threat has decreased since the time of listing on local and private lands at 10 of the 25 river basins in the United States described above where conservation plans are being implemented. In these river basins, arroyo toad occurrences are no longer at risk of being extirpated through permanent loss and destruction of riparian habitat. However, indirect effects of development, such as altered flow regimes, continue to cause longer term alterations to arroyo toad populations and the habitat that supports them. These alterations, while not likely to result in immediate extirpation of populations, can reduce the rates of survival and reproduction within populations, and result in a long-term decline in populations.

Even with the conservation actions described above, we still consider urban development is a threat with high impact to the arroyo toad and its habitat. Urban development currently has a large scope (affects portions of 23 out of the 35 occurrences of arroyo toad) and a serious severity, as it poses immediate and ongoing impacts to the species (Service 2013, p. 37). We also conclude that the current effects from urban development, while no longer likely to directly destroy habitat or result in immediate extirpation of occurrences, continue to degrade habitat and affect the health of the populations of arroyo toads. We consider overall that urban development is a threat with a high level of impact to the arroyo toad and its habitat (Service 2013, pp. 32–37).

Agriculture

At the time of listing, habitat loss and degradation from agricultural development was a major threat to the continued existence of the arroyo toad. Today, direct loss of habitat from agricultural development is no longer considered a threat. However, ongoing agricultural practices are known to impact arroyo toads and their habitat. These practices currently convert stream terraces and upland habitats adjacent to occupied arroyo toad habitat to farmland and road corridors, eliminate foraging and burrowing habitat for arroyo toads, and create barriers to dispersal. Streams may also be diverted for agricultural use, resulting in permanent loss of arroyo toad breeding habitat. Currently, 15 of the 35 river basins that support arroyo toads are impacted by agricultural practices.

Agricultural use adjacent to riparian areas can result in direct mortality of adult arroyo toads, as agricultural fields can act as ecological traps for arroyo toads. Toads are often attracted to agricultural fields for cover, food, and moisture, and can be killed by trampling, chemicals, and machinery (Griffin and Case 2001, pp. 641–642). In the Griffin and Case study (2001, p. 641), more than half of the male arroyo toads observed after July 29 were active in burrows or made new burrows in agricultural lands adjacent to breeding habitat. Mechanized tilling, pesticide application, and trampling were frequently observed in these agricultural fields within the study site (Griffin and Case 2001, p. 641).

Another concern related to agricultural development is agricultural runoff. As discussed in the *Urban Development* section above, runoff contains contaminants such as herbicides, pesticides, and fertilizers that may kill toads, affect development of larvae, or affect their food supplies or habitat (Service 1999, p. 41). For example, granular fertilizers, particularly ammonium nitrate, are highly caustic and have caused mass injuries and mortality to frogs and newts in Europe (Schneeweiss and Schneeweiss 1997 *in* Service 1999, p. 41). Though arroyo toads primarily inhabit areas with moving water (Lanoo 2005, p. 2), they may also be more susceptible to areas with chemical contamination in both terrestrial and aquatic environments, because their life history involves both aquatic larvae and terrestrial adult stages.

Since the time of listing, actions have been taken to reduce the impact of agriculture on arroyo toads and their habitat at two occurrences in the United States. An agricultural lease was discontinued on Marine Corps Base (MCB) Camp Pendleton adjacent to lower San Mateo Creek, where impacts to arroyo toads were documented in the Griffin and Case (2001) study. Also, within City of San Diego lands encompassing lower Santa Ysabel Creek, some agricultural leases have been moved away from riparian areas (McGinnis, City of San Diego, pers. comm. 2012).

Very limited information is available on the effects of agriculture to arroyo toads and their habitat in Mexico. We are aware that agriculture is affecting five river basins in Mexico, three of which are specifically impacted by groundwater pumping for irrigation (Lovich 2009, p. 85); however, the magnitude of these impacts is unclear.

Because arroyo toads use both aquatic and terrestrial environments, they are doubly impacted by agricultural activities that subject their habitats to increased fragmentation and decreased water quality. Efforts since the time of listing have removed the threat of direct habitat loss due to agricultural development, and reduced the impact of agricultural use near some occurrences. However, despite these efforts, this threat has a large scope, as impacts from agriculture continue throughout most of the species' range at 15 of 35 river basins. Though arroyo toad occurrences are no longer at risk of being extirpated through permanent conversion of riparian habitat to agriculture, arroyo toad populations may experience impacts such as alteration of water quality and barriers to dispersal; as such, we conclude that this threat has a moderate severity. While not likely to result in immediate extirpation of populations, these effects can cause mortality of individuals and reduce the rates of survival and reproduction within populations, and result in a long-term decline in populations. Therefore, we conclude that agriculture has a moderate level of impact to the arroyo toad and its habitat (Service 2013, pp. 37–39).

Operation of Dams and Water Diversions

Prior to listing, short- and long-term changes in river hydrology, including construction of dams and water diversions, were responsible for the loss of approximately 40 percent of the original range of the arroyo toad; furthermore, nearly half of all population extirpations prior to listing are attributed to impacts from original dam construction and operation (Sweet 1992, pp. 4–5; Ramirez 2003, p. 7). Today, the potential for construction of new dams has been greatly reduced, and no dams are presently anticipated to be built in river basins that support arroyo toads. However, water diversions and altered flow regimes due to operation of existing dams continue to affect arroyo toads in 19 of the 35 river basins that support them.

Because river flow forms physical habitats, such as riffles, pools, and bars in rivers and floodplains, the primary impacts to habitat from dams and water diversions are caused by flow alteration. Impacts of flow alteration on arroyo toad habitat include changes in the timing, amount, and duration of channel flows; loss of coarse sediments below the dam; and an increase in vegetation density due to the decrease or elimination of scouring flows (Madden-Smith *et al.* 2003, p. 3).

Arroyo toads and their breeding habitat can also be negatively impacted by sudden releases of excess water from dams. When these releases occur during the breeding season, they can reconfigure suitable breeding pools, thus disrupting clutch and larval development (Ramirez 2003, p. 7). Excessive water releases also wash away arroyo toad eggs and tadpoles, promote the growth of nonnative species, and reduce the availability of open sand bar habitat. For example, at Barrett Dam on Cottonwood Creek, water releases of several million gallons per day during the period when larval arroyo toads were metamorphosing negatively affected the population in San Diego County by washing away potential recruits from that year's population (Campbell *et al.* 1996, p. 15).

Flow alteration also causes habitat modification by promoting the growth of nonnative plants (Jennings and Hayes 1994, p. 56; Campbell *et al.* 1996, pp. 15–16; Madden-Smith *et al.* 2003, p. 3; Service 1999, pp. 42–44). Persistent releases from dams throughout the normal dry season cause changes in vegetation by discouraging the growth of native riparian species such as willow, sycamore, and cattails (*Typha* spp.) while encouraging the growth of some introduced species such as *Tamarix ramosissima* (tamarisk) and *Arundo donax* (giant reed) (Service 1999, p. 43). Increased vegetation density reduces the amount of open streambed and shallow pool habitat preferred by arroyo toads. For example, in Piru Creek, habitat has been degraded by the lack of scouring flows after the construction of Pyramid Dam, leading to an influx of vegetation that has made habitat unsuitable for arroyo toads (Sweet 2012, pers. comm.).

Dams also alter arroyo toad habitat through the creation of reservoirs. Reservoirs turn running water habitats into lake-like systems, resulting in the proliferation of nonnative species that are adapted to still waters and are able to move downstream or upstream of the reservoir (BIP 2012). Additionally, persistent water releases from dams throughout the year changes the water supply from ephemeral to permanent, which maintains nonnative predator populations (Campbell *et al.* 1996, p. 16; Madden-Smith *et al.* 2003, p. 3). Finally, reservoirs block in-stream movement of arroyo toads, which effectively isolates populations upstream and downstream of dams and may preclude recolonization of areas formerly occupied by the arroyo toad (Campbell *et al.* 1996, p. 18).

The ongoing impacts of dam operations to arroyo toads and their habitat have been reduced at four river basins since the time of listing through conservation measures. Recent coordination among the California Department of Water Resources, Forest Service, and Fish and Wildlife Service have resulted in releases from Pyramid Dam into Piru Creek that more closely mimic natural flows, benefitting the arroyo toad (Service 2009). In 2006, the Sweetwater Authority (Authority) implemented a Standard Operating Procedure of Loveland Reservoir to Sweetwater Reservoir water transfers in the lower Sweetwater River so that, if possible, no water is released during the arroyo toad breeding season except in the event of an emergency. Although these procedures are voluntary and may need further review, they improve on the prior conditions (water transfers occurring during the spring), which lessens the impacts to arroyo toads in the lower Sweetwater River.

The City of San Diego (City) has a voluntary internal policy guiding water transfers at two of the City's reservoir systems: (1) Morena Reservoir to Barrett Reservoir to Otay Reservoir; and (2) Sutherland Reservoir to San Vicente Reservoir. This policy minimizes impacts of water transfers to the Lower Cottonwood Creek Basin occurrence below Barrett Dam and the Upper San Diego River Basin occurrence that is above San Vicente Reservoir (it does not affect water transfers within the Upper San Diego River Basin occurrence below Cuyamaca Dam). Water transfers generally occur during winter months between October and March in order to take advantage of existing flows and minimize water lost to the river system, and avoid the breeding season of arroyo toad. City staff coordinates with the Service and contracts with an arroyo toad specialist to monitor before, during, and after a water transfer event (McGinnis, City of San Diego, pers. comm. 2012).

Very limited information is available on the effects of the operation of dams and water diversions in Mexico. Out of the 10 drainages in Mexico where arroyo toads occur, only the Rio Tijuana-Rio Las Palmas drainage has a municipal dam (Lovich 2009, p. 86). Consequently, the magnitude of effects on arroyo toad occurrences from the operation of dams and water diversions in Mexico is unclear.

Overall, the magnitude of the threat posed by the operation of dams and related water diversions has decreased since the time of listing. In four river basins, water releases that more closely mimic natural flow regimes have strongly decreased the impact of dams on local arroyo toad populations. However, within the other 15 river basins with dams and reservoirs, the altered stream dynamics resulting from dam operation result in encouragement of nonnative predators and nonnative, invasive plants, direct removal of habitat that supports arroyo toad populations, reduction of arroyo toad dispersal, and direct mortality of arroyo toads at all life stages. While construction of new dams and reservoirs that would result in destruction of habitat and extirpation of occurrences is not expected, operation of existing dams and reservoirs in 19 river basins will continue to alter the stream dynamics of arroyo toad habitat and affect the long-term survival and reproductive success of arroyo toad populations. Though the magnitude of the impacts from dam operations has decreased since the time of listing, because of the large scope and serious severity posed by the operation of dams and water diversions, we expect that this threat will continue to cause a high level of impact to the arroyo toad and its habitat now and into the future (Service 2013, pp. 39–45).

Mining and Prospecting

At the time of listing, in-stream recreational suction dredging for gold caused localized impacts and population effects to the arroyo toad.

For example, in 1991, during the Memorial Day weekend, four small dredges operating on Piru Creek in the Los Padres National Forest produced sedimentation visible more than 0.8 mi (1 km) downstream and adversely affected 40,000 to 60,000 arroyo toad larvae. Subsequent surveys revealed nearly total loss of the species in this stream section; fewer than 100 larvae survived, and only 4 juvenile toads were located (Sweet 1992, pp. 180–187). Since listing, we have become aware of impacts to arroyo toad habitat from sand and gravel mining, which causes runoff that can degrade arroyo toad habitat. Currently, sand, gravel, and suction dredge mining are taking place in 8 of the 35 river basins occupied by arroyo toads rangewide (Service 2013, p. 46); however, the impact of mining activities has been greatly reduced since the time of listing.

Where sand, gravel, and suction dredge mining activities occur, they can cause substantial alteration of arroyo toad habitat by degrading water quality, altering stream morphology, increasing siltation downstream, and creating deep pools that hold water year-round for introduced predators of arroyo toad eggs and larvae (Campbell *et al.* 1996, p. 16). Mining can also increase water temperature and turbidity and result in degrading or even destroying arroyo toad breeding habitat (CDFG 2005). The increase in suspended sediments in the stream can suffocate arroyo toad eggs and small larvae (Sweet 1992, pp. 179–185; Campbell *et al.* 1996, p. 16). In the case of suction dredge mining, arroyo toad eggs and larvae can also be entrained in the suction pump and killed (Reine and Clarke 1998, pp. 1, 12).

Though some mining activities are currently taking place, their impacts are localized. At two of the six river basins in the United States impacted by mines, for example, sand and gravel extraction continues to degrade habitat and increase sedimentation (Service 2008). Additionally, due to a 2012 change in CDFW regulations, suction dredge mining is now prohibited in Class A streams (Title 14, Natural Resources, §§ 228 and 228.5). Most of the streams and rivers occupied by arroyo toads in the United States are now classified as Class A (24 out of 25 occurrences in the United States), and, therefore, suction dredge mining no longer occurs in those streams. However, suction dredge mining could potentially impact arroyo toads in Lower Cottonwood Creek Basin. These new regulations do not affect current sand and gravel mining practices, which currently occur or have recently occurred at 4 of 25 occurrences in the United States.

In Baja California, Mexico, the sand mining industry is impacting the Rio Guadalupe, Rio Las Palmas, Rio Ensenada, and other smaller coastal arroyos (Lovich 2009, p. 90). Sand and rock are extracted in such large volumes that the hydrology in coastal canyons is affected, and associated riparian habitats are eliminated. The public has demonstrated opposition to this scale of sand mining, but the Mexican Government supports the industry (Lovich 2009, p. 90). Therefore, we find that mining activities pose a threat to the arroyo toad in Mexico (Service 2013, pp. 45–47).

Though some mining activities continue to occur in habitat that supports arroyo toad, these impacts have decreased in magnitude since the time of listing. Furthermore, given the reclassification of streams to disallow suction dredge mining, its impacts are unlikely to increase in the foreseeable future. Overall, as the scope of this threat is low (affecting 8 of 35 river basins rangewide), and the severity of the threat is moderate (likely to moderately degrade habitat or reduce 11 to 30 percent of occurrences), we find that mining activities are having a low level of impact on the arroyo toad in the United States (Service 2013, pp. 47–48).

Livestock Grazing

At the time of listing, we found overgrazing in riparian areas to be a potential source of mortality to arroyo toads, although it was not considered to be one of the factors that most adversely impacted the arroyo toad. Poorly managed grazing is known to have multiple impacts on arroyo toads and their habitat. Pastured cattle (and other livestock) can contribute to stream bank degradation and erosion (Moore 2000, p. 1). Cattle grazing can result in soil compaction, loss or reduction in vegetative bank cover, stream bank collapse, and increased in-stream water temperatures from loss of shade. Cattle can also trample or compact sandbars, preventing burrowing by adult toads (Campbell *et al.* 1996, p. 27). The extent of grazing at the time of listing is unknown; cattle grazing currently occurs at 10 of the 35 arroyo toad occurrences rangewide (Service 2013, pp. 48–49).

Since the time of listing, significant progress has been made toward reducing or eliminating the impact of cattle grazing. The Forest Service has developed grazing allotment management guidelines to reduce the effects of livestock grazing on threatened and endangered species and habitat. Consultation between the Forest Service and the Service through section 7 of the Act on grazing allotment permit renewals has resulted in minimization and mitigation of impacts on arroyo toads (Service 2000a; 2001a; 2001b; 2004a; 2009). Los Padres National Forest has kept the Sisquoc Grazing Allotment in the Santa Maria River Basin vacant for approximately 10 years due to concerns about impacts to arroyo toads and other sensitive riparian species (Cooper 2009, pers. comm.). On the Cleveland National Forest, grazing has a minimal impact because the Forest Service excluded most of the habitat occupied by arroyo toads from grazing allotments during the 1990s. The Cleveland National Forest has also formally excluded grazing from some arroyo toad habitat, including 12,112 ac (4,901 ha) centered around riparian areas (Service 2005, entire), as well as areas with arroyo toad habitat in Lower Santa Ysabel Creek Basin and Upper Cottonwood Creek Basin (Service 2001a, entire). The Pine Valley Allotment, which was the only streamside grazing allotment in the Cleveland National Forest still active at the time of the 5-year review in 2009, is now vacant (Winter 2012, pers. comm.).

Though grazing can result in alteration of the streamside habitat that supports arroyo toads, multiple conservation actions have been put into place since the time of listing. We anticipate that reductions of impacts from grazing will continue to be implemented through the continued implementation of the forest plans, which include minimization measures implemented on grazing allotments issued by Los Padres and Cleveland National Forest. We also expect continued consultation between the Forest Service and the Service through the section 7 consultation process. These two forests manage portions of nine river basins that support arroyo toads. Furthermore, we expect that the conservation measures currently in place will continue to be implemented regardless of the listing status of the arroyo toad.

Some impacts from livestock grazing are occurring in Mexico (Lovich 2009, p. 85); however, the magnitude of these impacts is unclear, and we have no information on how many river basins in Mexico are impacted by grazing activity.

Overall, grazing is a threat with a restricted scope, as only 10 of the 25 river basins in the United States that support arroyo toads are currently affected by livestock grazing. Based on the best available scientific and commercial information, the remaining

15 river basins are not of appropriate land use or habitat type to support grazing; therefore, we do not expect that grazing will occur at these river basins in the future. At the river basins where grazing does occur, reductions in the level of grazing and improved management practices have significantly reduced the impacts to arroyo toads and riparian habitat. We conclude that grazing has a moderate impact on arroyo toads. Although it may result in localized impacts to streams, which reduce the quality of habitat and may cause some decrease in rates of survival and reproduction within populations, it is unlikely to result in a long-term decline in populations. Therefore, we find that grazing is a low-level threat to the arroyo toad and its habitat (Service 2013, pp. 47–50).

Roads and Road Maintenance

When roads occur within or in close proximity to stream habitat that supports arroyo toads, road use, construction and maintenance can have a detrimental impact on arroyo toads and their habitat. Toads are crushed by equipment on the roads or when vehicles use low water crossings during normal daytime project activities. Toads can also be harmed or disturbed when rocks and debris are removed from the road surface or ditches near habitat. On unpaved, sandy roads, toad mortality can occur because increased food sources (ants, other insects) lure toads onto roads at night, and because arroyo toads like to burrow into sandy roadbeds during the day (Sandburg, U.S. Forest Service, pers. comm., 1997). At the time of listing, the use of heavy equipment in yearly reconstruction of roads and stream crossings in the national forests caused ongoing impacts to arroyo toads and their habitat. On the Cleveland National Forest, roads are still identified as one of the top three threats to arroyo toad, along with drought and aquatic predators (Winter, pers. comm. 2012). Currently, impacts from road construction, use, and maintenance on Federal, public, and private lands affect 20 out of the 35 river basins where the arroyo toad is known to occur.

Low water stream crossings pose a particular risk to arroyo toads. Unimproved stream crossings can develop characteristics of suitable toad habitat that attracts arroyo toads—shallow, sand or gravel-based pools with low current velocity and minimal shoreline woody vegetation (USFS 2012, p. 45). Adults burrow during the day but come out at night to forage, so are more likely be killed by nighttime traffic or during wet weather. Vehicles using low water crossings over streams cause increased siltation, which can cover and suffocate egg masses and larvae (Service 2000b, p. 14). Eggs or larvae could also be crushed or disturbed when vehicles use low water crossings (Service 2000b, p. 13). Hardened crossings lack the substrate that toads prefer, but adults will forage on any stream crossing at night (USFS 2012, p. 45).

Apart from direct injury to toads, road maintenance can also alter habitat so that it is unsuitable for arroyo toads. Low water crossing maintenance above or below crossings, such as removal or shaping of sediments, debris, or vegetation, can alter habitat suitability for arroyo toads by increasing the flow over the crossing (USFS 2012, p. 45). Soil disturbance, such as can occur from vehicle use, has been directly implicated in both lethal and sublethal effects on amphibians (Maxell and Hokit 1999, p. 2.11). If not contained, road construction may cause increased sedimentation in adjoining aquatic habitats (Maxell and Hokit 1999, p. 2.11). Traffic on native surface and dirt roads causes soil erosion that can run off into streams, particularly during wet weather. Furthermore, pollutants from exhaust and tire wear can build up along roadsides and enter riparian areas.

Since the time of listing, the impacts of roads and road maintenance have been reduced through conservation measures and protection under the Act. To reduce this threat on Federal lands, Los Padres National Forest reinitiated section 7 consultation (8–8–12–F–43) (Service 2012, entire) with the Service for ongoing activities related to their transportation system and road use in the Santa Clara River Basin and Santa Ynez River Basin. Los Padres National Forest must repair and maintain approximately 1,025 mi (1,649 km) of roads and 137 low water stream crossings on forest lands, and implements best management practices and conservation measures to protect the arroyo toad before conducting any road or water crossing maintenance. Such measures may include pre-construction surveys, relocating individuals to suitable habitat nearby, removing nonnative species, avoiding maintenance during the breeding season, and developing water control plans. In addition, Los Padres National Forest has rerouted trails and closed roads in arroyo toad habitat. In the Southern Recovery Unit, the Angeles, Cleveland, and San Bernardino National Forests have completed similar section 7 consultations to reduce or avoid effects from ongoing road use and maintenance to arroyo toads and habitat within the portions of 11 arroyo toad occurrences that occur on their land. The minimization and mitigation measures within these consultations have been incorporated into recent management plans completed by the Forest Service; the measures in these plans are not dependent on the listing status of the arroyo toad.

Very limited information is available on the effects of roads and road maintenance in Mexico. We are aware that one paved road, Highway 1, is impacting one river basin that supports arroyo toads in Mexico (Lovich 2009, pp. 79, 86); however, the magnitude of impacts from the use and maintenance of this coastal highway is unclear.

Overall, conservation measures have recently reduced the threat of road use and construction and maintenance at three occurrences. Furthermore, we expect to continue to coordinate with our partners through existing section 7 processes to minimize and mitigate the impacts of roads and road maintenance. Overall, this threat has a large scope, affecting 20 of 35 river basins, and a moderate severity, as it can potentially cause effects such as permanent loss of breeding habitat, and creation of barriers to dispersal. Therefore, we find that roads and road maintenance have a moderate level of impact on the arroyo toad and its habitat (Service 2013, pp. 51–54).

Recreation

At the time of listing, recreational activities in riparian wetlands had substantial negative effects on arroyo toad habitat and individuals. Streamside campgrounds in southern California national forests were frequently located adjacent to arroyo toad habitat (Sweet 1992). With nearly 20 million people living within driving distance of the national forests and other public lands in southern California, recreational access and its subsequent effects are an ongoing concern (CDFG 2005). Currently, 22 out of 35 river basins are impacted by recreational facilities and activities, including 13 river basins with land managed by the Forest Service.

Recreational activities that currently affect the arroyo toad are trail use, swimming, trail maintenance, and off-highway vehicle (OHV) activity. Activities such as construction of roads, trails, recreational facilities, and water impoundments may permanently replace natural toad habitat (Maxell and Hokit 1999, p. 2.15). Recreational use may also degrade habitat; for example, grazing by pack horses at stream crossings may impact streamside vegetation or trample various life stages of the arroyo toad (USFS 2013a, p. 17). Additionally, campgrounds focus large

numbers of people and intensive use on limited habitats. Streamside campgrounds in the three southern California National Forests (Los Padres, Angeles, and Cleveland) have frequently been located in or near (165 to 300 feet (ft) (50 to 92 meters (m)) arroyo toad habitat (Sweet 1992, pp. 158–160). In the Los Padres National Forest, almost all occurrences that support arroyo toads are located where hiking trails follow the floodplain and cross the stream channels in multiple locations within a short distance. Streamside campgrounds and recreational activities also reduce riparian vegetation and increase soil erosion and sedimentation that can cover and kill algae, bacteria, and fungi on the surface of rocks that act as food sources for arroyo toad tadpoles (Sweet 1992, p. 190; USFS 2013a, p. 17).

Disturbances created by recreation favor the germination, establishment, and growth of nonnative plant species, substantially altering food availability within a habitat (Service 2013a, pp. 17–18). Furthermore, people swimming and wading in the creek increases the turbidity of water and can create excess sedimentation, which is known to bury eggs or suffocate larvae (Sweet 1992, p. 150). Decreased populations of amphibians including arroyo toads have been found downstream from popular swimming destinations in Cleveland National Forest and Cuyamaca Rancho State Park (Brown, USGS, pers. comm. 2012). Currently, recreational use (mostly campgrounds and swimming) is still impacting six river basins in Cleveland National Forest (Winter, pers. comm. 2012).

OHVs may also pose a threat to arroyo toads. Sweet (1992, pp. 162–163) observed OHV use in arroyo toad breeding sites on the Los Padres National Forest that resulted in the deaths of arroyo toad egg clutches, larvae, and juveniles. OHVs used on sandy, unpaved roads may cause mortality of adult toads because increased food sources (ants, other insects) lure toads onto roads at night and because arroyo toads like to burrow into sandy roadbeds during the day (Sandburg, USFS, pers. comm., 1997). In addition to direct mortality resulting from collisions, OHVs may disrupt habitat to the point that it becomes unusable by herpetofauna (Maxell and Hokit 1999, p. 2.10). OHVs spread seeds of nonnative plants and disturb soils, contributing to excess erosion and sedimentation of aquatic habitats. Noise from on- and off-road vehicles is also likely to have negative indirect impacts on amphibians. Although we did not find studies that targeted arroyo toads specifically, a study by Nash *et al.* (1970), found that leopard frogs exposed to loud noises (120 decibels) remained immobilized for much longer periods of time than a similarly handled control group. Thus, an immobility reaction resulting from noise-induced fear could increase mortality of amphibians that inhabit areas used by OHVs or individuals that are crossing roads by inhibiting their ability to find shelter or move across a roadway (Maxell and Hokit 1999, pp. 2.2–2.10).

Conservation measures have been enacted in habitat surrounding several river basins to reduce or eliminate the impact of recreational activities on arroyo toads and their habitat. The Los Padres, Angeles, Cleveland and San Bernardino National Forests are taking measures to decrease the effects of recreational activities on arroyo toads and their habitat, including seasonal or permanent closure of campgrounds, posting of interpretive signs, closure of trails, installation of stream crossings, and public education programs (Service 1999, pp. 55–56; Service 2003a, entire; Service 2005, entire; Cooper 2009, pers. comm.; USFS 2013b, pp. 1–85).

Where recreational activities occur, they may result in the loss and fragmentation of arroyo toad habitat; however, conservation measures have reduced the effects of recreational use on the arroyo toad and its habitat at 6 of the 22 occurrences where recreational activities occur. We do not have any information on whether recreational activities are impacting river basins that support arroyo toads in Mexico, but we would expect the level and types of recreational activities to be similar and to have similar impacts as in the United States. Overall, because this threat has a large scope, and because it has a moderate level of severity, we conclude that effects from recreational use have a medium level of impact on the arroyo toad and its habitat (Service 2013, pp. 54–59).

Invasive, Nonnative Plants

At the time of listing, invasive, nonnative plants were not identified as a threat to arroyo toads. Since then, nonnative plants have been recorded in 16 of the 35 river basins that support arroyo toads. Nonnative plant species impact arroyo toads and their habitat by altering the natural hydrology of stream drainages and eliminating sandbars, breeding pools, and upland habitats (Service 2009, p. 11). Nonnative plants can be spread by OHVs, recreation, livestock, and camping activities (Maxell and Hokit 1999, p. 2.8). Currently, 16 of 35 river basins are impacted by invasive, nonnative plants.

The most problematic nonnative plant species in aquatic systems in southern California is *Arundo donax* (giant reed), which is widespread along the Ventura, Santa Clara, Santa Ana, Santa Margarita, San Luis Rey, and San Diego Rivers (CDFG 2005). Giant reed invades stream banks and lakeshores, where it can completely displace native vegetation, reduce wildlife habitat, increase fire risk, and alter flow regimes, resulting in flooding (Ventura County 2006, pp. 21–23). Additionally, as of 2010, dense stands of giant reed were still common along sections of the lower Santa Margarita River on MCB Camp Pendleton despite control efforts (Brehme *et al.* 2011, p. 32).

Another problematic nonnative species, *Tamarix ramosissima* (tamarisk), is less widespread than giant reed but also invades riparian habitats in the above-listed rivers and is distributed in coastal and desert drainages (Coffman *et al.* 2005, p. 2724). Tamarisk can replace or displace native woody species such as cottonwood and willow that occupy similar habitats, especially when timing and amount of peak water discharge, salinity, temperature, and substrate texture have been altered by human activities (Carpenter 2004, pp. 1–30). It is an aggressive, woody invasive plant that can tolerate a variety of environmental conditions and has become established over as much as a million acres of floodplains, riparian areas, wetlands, and lake margins in the western United States (Carpenter 2004, pp. 1–30). Tamarisk also consumes large quantities of water, possibly more than woody native plant species occupying the same habitat (Carpenter 2004, p. 3). Highly resistant to removal by flooding, tamarisk has the potential to form dense corridors along most large streams. Where this has been allowed to occur, tamarisk has replaced native vegetation, invaded sand bars, and led to channelization by constricting flood flows. In recent years, tamarisk has been recorded in all watersheds on MCB Camp Pendleton, although large stands persisted only along the lower Santa Margarita River (Brehme *et al.* 2011, p. 32).

Centaurea solstitialis (yellow star thistle) and *Nasturtium officinale* (watercress) are also altering the habitat that supports the arroyo toad. Yellow star thistle is one of the most ecologically and economically damaging nonnative plants in California (UC Davis 2007, p. 1). It is a fast-growing invasive plant whose taproot can reach over 3 ft (1 m) deep into the soil, allowing it to thrive during dry, hot summers. When yellow star thistle becomes well-

established on stream terraces, arroyo toads are unable to dig burrows for shelter or estivation (Sweet 2007a, p. 1). Watercress can also invade arroyo toad habitat. After a fire in the upper Sweetwater River resulted in increased sedimentation that created more breeding habitat for the arroyo toad, watercress subsequently invaded and covered the water surface, and arroyo toad recruitment declined (Brown, USGS, pers. comm. 2012). It is possible that, while reducing available breeding area, the watercress reduced detectability of arroyo toads. However, in sandy open areas, larvae of other toad species were detected while arroyo toads were not (Brown, USGS, pers. comm. 2012). Watercress has become well established in the Lower Santa Margarita River Basin, and scattered patches of watercress have been observed in the upper portions of San Mateo and San Onofre Creeks (Brehme *et al.* 2011, p. 32).

Conservation measures and management are currently being enacted to reduce the impact of nonnative plants on arroyo toads. The Los Padres National Forest has made a concerted effort to remove giant reed and tamarisk from arroyo toad habitat. Forest Service staff and volunteers conduct annual tamarisk removal along portions of Piru Creek, Sisquoc River, Santa Ynez River, and Sespe Creek to protect and restore arroyo toad habitat. At MCB Camp Pendleton, measures mandating control of nonnative plants have been implemented through section 7 consultation (Service 1995, pp. 1, 26, 32, 35). These measures are further described and incorporated into the most recent Integrated National Resources Management Plan (INRMP) for MCB Camp Pendleton (MCB Camp Pendleton 2007, pp. C–1–C–19). Removal efforts on the Base have reduced prevalence of giant reed, with the help of naturally occurring scouring from flooding events. Researchers recommend continued eradication efforts of nonnative plants on MCB Camp Pendleton, particularly those that alter the natural hydrology of watersheds occupied by arroyo toad (Brehme *et al.* 2011, p. 38). Though these efforts have aided in decreasing the threats posed by nonnative plants, management methods of these plants are limited, as control by herbicides and pesticides can have impacts to arroyo toads.

Where invasive, nonnative plants occur, they can degrade arroyo toad habitat and alter stream dynamics. Though conservation measures have been successful in reducing the spread of these nonnative plants at 6 of the 16 occurrences affected by nonnative plants, impacts continue. We do not have any information regarding whether invasive, nonnative plants are impacting river basins that support arroyo toads in Mexico, but would expect that some effects are occurring. While the impact of invasive, nonnative plants will not result in the immediate loss of habitat and extirpation of populations, they will continue to degrade arroyo toad habitat and reduce its carrying capacity over the long term and result in decreased survival and reproduction of affected populations. Overall, due to the large scope and moderate severity of the effects of invasive, nonnative plants on arroyo toads and their habitat, we find that this threat has a medium level of impact (Service 2013, pp. 54–63).

Introduced Predator Species

At the time of listing, nonnative predators had caused substantial reductions in the sizes of extant populations of arroyo toads, and had caused arroyo toads to disappear from large portions of historically occupied habitat (Jennings and Hayes 1994, p. 57). The introduction of nonnative aquatic species has been facilitated by the construction of the California Aqueduct and other sources of inter-basin water transport (Service 1999, p. 48). Today, 28 of 35 river basins are impacted by introduced predator species.

Predatory species known to prey on arroyo toad adults, tadpoles, or eggs include green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterous salmoides*), black bullhead (*Ictalurus nebulosus*), prickly sculpin (*Cottus asper*), stocked rainbow trout (*Oncorhynchus mykiss*), oriental gobies (*Tridentiger* spp.), red shiners (*Notropis lutrensis*), American bullfrogs (*Lithobates catesbeiana*), African clawed frogs (*Xenopus laevis*), crayfish (*Procambarus clarkia*), and mammalian species including raccoons (*Procyon lotor*) and opossums (*Didelphis virginiana*) (Sweet 1992, pp. 118–122; Service 1999, pp. 17, 48). All of these species prey on arroyo toad tadpoles, and all but the crayfish, red shiners, and African clawed frogs were known to impact arroyo toads at the time of listing (59 FR 64859; December 16, 1994). Where nonnative predators occur, they can be widespread and occur in high abundances. For example, surveys along San Mateo Creek on the Cleveland National Forest confirmed a very high abundance and widespread distribution of nonnative aquatic species, with approximately 77 percent of the ''major'' pools and 45 percent of the ''minor'' pools occupied by at least one nonnative species (ECORP 2004, pp. 18, 25).

Bullfrogs and African clawed frogs are two of the primary introduced species that prey upon arroyo toads. Both species feed on arroyo toads at all life stages (Sweet 1992, p. 128; Ramirez 2007, p. 102). Sweet (1992, p. 132) found that bullfrogs, which target calling male arroyo toads, were associated with resulting sex ratio biases in arroyo toads of 1:14 (1 male to 14 females) in Sespe Creek. Of 40 bullfrogs captured along the Santa Margarita River in 2008, arroyo toad remains were found in the stomach contents of over half of them (Brehme *et al.* 2011, p. 44). USGS further estimated 125 arroyo toads were being consumed by bullfrogs per kilometer per month along the lower Santa Margarita River (Backin and Brehme, USGS, pers. comm. 2012). Additionally, over the past 20 years, at least 60 species of fishes have been introduced to the western United States, 59 percent of which are predatory. Arroyo toad tadpoles are subject to predation by many of these introduced fish species, especially green sunfish and prickly sculpin. Mosquitofish (*Gambusia affinis*) and crayfish have also been observed to prey on both tadpoles and eggs.

In recent years, wild pigs (*Sus scrofa*) have been recognized as a likely new stressor to arroyo toads, and are now found at 5 of 35 river basins. Arroyo toads are expected to be adversely affected in the San Diego River watershed as a result of wild pig introductions (SDNHM 2010, pp. 3, 23, 29, 32, 34–35). The mild climate of San Diego County can support rapid population growth and expansion of wild pig populations, making eradication of wild pigs unlikely and control difficult (CBI 2009, pp. 14, 20–21; SDNHM 2010, p. 42; Winchell, USFWS, pers. comm. 2012). Wild pigs negatively affect almost all aspects of ecosystem structure and function; for example, areas where pigs have rooted appear as if rototilled, leaving large areas of bare earth that can be easily colonized by invasive, nonnative weeds (Jolley *et al.* 2010, p. 519). Wild pigs may also directly consume arroyo toads, as they are opportunistic omnivores whose diet has been observed to include reptiles and amphibians (Barrett and Birmingham 1994, p. D–66; Wilcox and Van Vuren 2009, p. 114; Jolley *et al.* 2010, pp. 520–522).

Detrimental effects of arroyo toad predation have been demonstrated throughout the range of the species. Along the Santa Margarita River in MCB Camp Pendleton, occupancy models for wet arroyo toad habitat indicate that

nonnative aquatic predators had the largest negative impact on arroyo toad occupancy and detectability (Brehme *et al.* 2006, p. 43). This negative association weakened to a level of insignificance in 2009—which corresponded with elevated aquatic predator removal efforts—but returned again in 2010 along with a greater number of sites where nonnative predator fish and crayfish were detected (Brehme *et al.* 2011, pp. 29, 31, 35–36). Brehme *et al.* (2011, pp. 2–3) strongly recommend continued control of nonnative aquatic species, especially bullfrogs and crayfish, for continued persistence of arroyo toad in the lower Santa Margarita River. Once established, nonnative predators appear resilient and persist in the system except when drying creates a period of habitat unsuitability (Miller *et al.* 2012, pp. 2, 7). Thus, Brehme *et al.* (2011, p. 2) recommend modifying water releases along the lower Santa Margarita River to simulate a more natural hydrology pattern (i.e., no releases in summer months), along with continued, elevated control of nonnative aquatic species.

Some progress has been made since listing toward reducing the threat of introduced predators to arroyo toads and their habitat. Efforts are being made to remove or reduce nonnative animal populations in several areas, including the Santa Ynez River Basin on the Los Padres National Forest and in the Santa Clara River Basin on the Angeles National Forest. Forest Service personnel have also worked with animal control agencies to reduce the releases of raccoons and opossums in arroyo toad habitats. At MCB Camp Pendleton, pursuant to a biological opinion issued in 1995, the Base must take measures to assess threats to the survival and recovery of arroyo toad, including those from nonnative predators (Service 1995, pp. 1, 26, 32, 35). Measures to control nonnative predators are further described and incorporated in the most recent INRMP for MCB Camp Pendleton (MCB Camp Pendleton 2007, pp. C–1–C–19). Nonnative aquatic predator removal on Base has been ongoing for several years and has shown a benefit to arroyo toads in the Lower Santa Margarita River Basin.

In the San Juan Creek Basin in Orange County, a 6-year aquatic predator control program was conducted as mitigation for two California Department of Transportation (CalTrans) projects on adjacent State Route 74. The program was effective in reducing bullfrog adults and larvae from the headwaters of the creek and has slowed local proliferation of this species. Continuation of removal efforts is recommended within the creek and at downstream breeding populations that provide sources of dispersal into the study area (LSA and BonTerra 2012, pp. 12–13). However, the program ended in 2012. As another CalTrans project is anticipated along State Route 74, the work could be continued through this new project, but may not be initiated for another year or more. Actions such as these provide benefits only in the short term unless replaced with a long-term mechanism for continued predator control and/or eradication.

In order to address the impacts of feral pigs, the Cleveland National Forest prepared an environmental assessment of a proposed feral pig damage control project on the Forest, Bureau of Land Management lands, and on the Capitan Grande Indian Reservation (USDA 2012, p. 49). However, implementation of this project is uncertain. Securing funding and access to private lands where wild pigs might be found outside Federal lands are necessary in order to control this species, but are currently challenging (Winchell, USFWS, pers. comm. 2012).

Very limited information is available on the effects of introduced predators in Mexico. We are aware that introduced predators are present at all 10 river basins in Mexico that support arroyo toads (Lovich 2009, pp. 90–91); however, the magnitude of impacts on local populations is unknown.

Introduced predators are currently impacting arroyo toads at 28 out of the 35 river basins where the arroyo toad is known to occur. Where introduced predators occur, they have an extreme effect on arroyo toads and their habitats. Currently, 5 of the 28 river basins impacted by nonnative predators have conservation measures to mitigate the impacts of introduced predators. We find that introduced predators are the most important factor threatening the arroyo toad across its range. Introduced predators have a pervasive scope and an extreme threat severity, as introduced predators may cause reductions in population size or even extirpation of entire arroyo toad populations. Therefore, introduced predators are a threat with a very high impact on the toad and its habitat (Service 2013, pp. 64–69). However, despite this high level of impact, and the fact that bullfrogs and other predators have become well-established in arroyo toad habitat (Service 2013, p. 69), no populations have yet been extirpated.

Drought

At the time of listing, drought and the resultant deterioration of riparian habitats in Southern California was considered to be the most significant natural factor adversely affecting the arroyo toad. Though arroyo toads likely naturally evolved with periodic drought conditions, the 1994 listing rule concluded that drought conditions, when combined with alteration of natural flow regimes, had degraded riparian ecosystems and created extremely stressful conditions for most aquatic species; drought years are also known to result in low food supplies that can be detrimental to breeding arroyo toads (59 FR 64859, December 16, 1994). Today, 21 of the 25 occurrences in the United States are impacted by drought as exacerbated by altered flow regimes.

Drought conditions continue to impact both arroyo toad populations and the riparian habitat that supports them. As drought conditions increase, reduction in plant growth results in less available canopy cover and shade, which could increase predation rates on arroyo toads (Campbell *et al.* 1996, p. 12).

As stated in the 1994 listing rule, drought can also directly impact breeding arroyo toads. During drought conditions, plants produce fewer flowers for insects; fewer insects result in less available food for arroyo toads. A major concern regarding the effect of drought on arroyo toads is that female toads may not be able to find sufficient insect prey to build up enough fat storage for egg production in time to find a mate, resulting in no reproduction for that year (Sweet 1992, pp. 56, 172, and 190; Campbell *et al.* 1996, p. 11). In addition, if streams dry up too early in the breeding season, arroyo toad tadpoles may not have enough time to reach metamorphosis.

The habitat requirements and life history of the arroyo toad increases the impact of drought on the species. Most waterways occupied by arroyo toads are small and are ephemeral streams at high elevations. At lower elevations, impacts from drought on arroyo toad occurrences are exacerbated by alteration of hydrology from dams, water diversions, and groundwater extraction due to urbanization and agriculture (see discussion under the *Urban Development, Agriculture,* and *Operation of Dams and Water Diversions* sections above). The arroyo toad's lifespan averages 5 to 6 years; if drought persists longer than 6 years, entire populations could be extirpated for lack of water (Sweet 1992, p. 147; Backlin and Brehme, USGS, pers. comm. 2012). For example, arroyo toad occurrences in ephemeral streams on MCB Camp Pendleton (San Mateo Creek, San Onofre Creek basins) and

Remote Training Site Warner Springs (Upper San Luis Rey River Basin) are at increased risk of extirpation from a prolonged drought and may be more dependent upon dispersal from more stable sites for recolonization (Brehme *et al.* 2006, pp. 43–44; Clark *et al.* 2011, p. 18).

At this time (March, 2014), the U.S. Drought Monitor shows that the worst drought category, ''exceptional drought,'' covers 9 percent of California and ''extreme drought'' (the second worst category) has increased to cover 67 percent of California (U.S. Drought Monitor 2014). According to the drought map (U.S. Drought Monitor 2014), most of the known arroyo toad occurrences in California are within drainages affected by the current drought. Therefore, we estimate that arroyo toad occurrences in 21 out of the 25 river basins in the United States are being affected by drought as exacerbated by altered hydrology. We do not have any information on how or if drought impacts river basins that support arroyo toads in Mexico but we expect that at least some of the river basins would be affected by regional droughts in similar fashion as the river basins in the United States, particularly at the one occurrence in Mexico that has a dam that alters natural flow regimes. Drought is certainly not unique in southern California and arroyo toad populations have withstood such episodes in the past, such that we are not aware of any occurrences that have become extirpated since listing due to drought conditions. However, the continued operation of dams and other water diversions adds stress to arroyo toad populations in ephemeral streams. Because the scope of the impacts from droughts are large (affecting 21 of the 25 river basins in the United States, and likely additional river basins in Mexico), and because drought has a serious level of severity on arroyo toad population and habitat, we find that drought conditions are a threat that results in a high level of impact to arroyo toad populations throughout their range (Service 2013, pp. 32–37).

Periodic Fire and Fire Suppression

In recent decades, large fires in the West have become more frequent, more widespread, and potentially more deadly to wildlife (Joint Fire Science Program 2007). At the time of listing, periodic fires were considered a threat to the arroyo toad and its habitat. In 1991, the Lions Fire on upper Sespe Creek in the Los Padres National Forest directly destroyed riparian habitat along Sespe Creek in the Santa Clara River Basin, which contained the largest known extant population of arroyo toads. The fire also destroyed 15 known breeding pools and over 50 percent of the known adult population on the Sespe drainage; however, by 1993, the population and its habitat had largely recovered due to recruitment from healthy populations of arroyo toads downstream (Sweet 1993, p. 19). Today, a robust population continues to persist in upper Sespe Creek. Currently, 22 of the 25 river basins in the United States are affected by fire suppression and periodic fire (Service 2013, p. 74), particularly as the natural fire regimes in Southern California have altered in frequency and intensity in recent decades. The remaining three river basins in the United States are not in habitats characterized as at high risk from altered fire regimes.

Periodic fires are considered a threat to the arroyo toads because fires can cause direct mortality of arroyo toads, destroy streamside vegetation, or eliminate vegetation that sustains the watershed. Pilliod *et al.* (2003, p. 176) state that the effects of fire may be greatest for amphibians that are habitat specialists, such as arroyo toads, compared to species that occupy different types of habitat and tolerate a wide range of environmental conditions. Other effects from fires include increased water temperature (as a result of canopy loss), toxic effects of smoke and fire retardant to water chemistry, increased sedimentation in streams and ponds that negatively impact reproduction and recruitment, and the effects of fire and post-fire conditions on arroyo toad terrestrial movements (Pilliod *et al.* 2003, pp. 163–181). In addition, wildfires often generate a substantial increase in erosion following the loss of protective ground cover and root anchors (Service 2003, p. 8). Although arroyo toads may recolonize areas impacted by fire (as occurred in upper Sespe Creek), recruitment from downstream occurrences is likely not possible in all locations due to habitat alteration from urbanization, existing dams, and other impacts.

Since the time the arroyo toad was listed in 1994, we now recognize that arroyo toads may also be impacted by fire suppression and firefighting activities, including fire line construction, hand line construction, bulldozing, water withdrawal using helicopters and pumps, backfiring, and fire camp and safety zone construction. After the 2007 Zaca Fire in Los Padres National Forest, a number of broad fuelbreaks and safety zones were bulldozed in several areas, including the lower portions of Mono and Indian Creeks (Sweet 2007a, pp. 1–9; 2007b, p. 1). At that time of year, a large proportion of the population would have been within burrows on the terraces, and any toads that were in burrows were very likely killed by bulldozing (Sweet 2007a, p. 1). Sweet (2007a, p. 1) also reported that the bulldozing operations also severely degraded upland habitat; for example, bulldozing created large piles of woody debris between the creek bed and the terraces that created substantial barriers to arroyo toad movement.

Periodic fire and fire suppression activities could potentially impact the arroyo toad through permanent loss of breeding habitat; permanent loss of upland habitat; and mortality, injury, or displacement of individuals. Currently, fire could impact 22 out of the 25 river basins in the United States where the arroyo toad is known to occur. Although we expect that fire could also impact river basins that support arroyo toads in Mexico, we currently lack information on habitat types and fire regimes in those areas.

Despite the potentially high level of impacts that fire and fire suppression can have on the species, very few fires have occurred in arroyo toad habitat since the time of listing, and we expect the incidence of fires will remain relatively constant. Fire and fire suppression activities have a large scope (affecting 22 of the 25 river basins in the United States) and a moderate severity, as fire could permanently or temporarily alter breeding habitat and cause mortality of arroyo toads. Therefore, we find that fire and fire suppression activities are a threat with a medium level of impact on the arroyo toad (Service 2013, pp. 72–37).

Climate Change

At the time of listing, the potential impacts of climate change to the arroyo toad and its habitat were not assessed. In the 2009 5-year review, we recognized that climate change could impact arroyo toad habitat; however, we lacked downscaled projections to make predictions on how a changing climate could impact arroyo toad habitat. Today, more information on downscaled climate projections has become available, and we conclude that effects of climate change could impact all 35 river basins that support arroyo toads and their habitat.

The term ''climate change'' refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, usually decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Various types of changes in climate can have direct or indirect effects on species, including the arroyo toad. Specific effects of climate change on the arroyo toad and its habitat depend on the magnitude of future changes.

Predictions for changes in temperature vary across the range of the arroyo toad. Downscaled projections of temperature were available for the 25 river basins in the United States that support arroyo toads. In the Central Western California Ecoregion, which contains four river basins in the northern portion of the arroyo toad's range, mean annual temperatures are predicted to increase from 1.6 to 1.9 °C (2.9 to 3.4 °F) by 2070 (PRBO 2011, pp. 35, 40). In the Southwestern California Ecoregion, which contains 21 river basins, temperatures are predicted to rise 1.7 to 2.2 °C (3.1 to 4.0 °F) (PRBO 2011, pp. 35, 40). High temperature events are expected to become more common in both ecoregions, and taxa with very narrow temperature tolerance levels may experience thermal stress to the point of direct mortality or diminished reproduction in the Southwestern California Ecoregion (PRBO 2011, pp. 38, 42).

There is a general lack of consensus of the effects of future climate change on precipitation patterns in both ecoregions. Some models suggest almost no change, whereas others project decreases of up to 32 percent in the Central Western California Ecoregion and 37 percent in the Southwestern California Ecoregion by 2070 (PRBO 2011, pp. 35, 40). Qualitative indicators of changes in concentrated near-surface water vapor (atmospheric rivers) above the Pacific Ocean in current projections suggest flood risks in California from warm-wet storms may increase beyond those known historically, mostly in the form of occasional more-extreme-than-historical storm seasons (Dettinger 2011, p. 522).

Changes in climate may impact the historical flow regimes that support arroyo toads. Snyder *et al.* (2004, pp. 594, 600) has projected that annual snow accumulation will decrease significantly for all hydrologic regions in California. Reduced snowpack will lead to reduced stream-flows, especially in the spring (EPA 2012). Additionally, rising temperatures cause snow to begin melting earlier in the year, which alters the timing of stream-flow in rivers that have their sources in mountainous areas (EPA 2013). Thus, taxa that rely on runoff from snowmelt will find streams and rivers drying up much earlier than before, and temperatures of the water are likely to increase due to a reduction in snowmelt contribution, likely altering riparian communities downstream (Snyder *et al.* 2004, p. 600; PRBO 2011, p. 42).

Additional impacts from climate change on arroyo toad habitat include reductions in groundwater systems and overall water supply. Surficial aquifers, which supply much of the flow to streams, lakes, wetlands, and springs, are likely to be the part of the groundwater system most sensitive to climate change (Alley *et al.* 1999, p. 21). Increased competition for water resources in the southwestern United States and Mexico are expected due to projected temperature increases, river-flow reductions, dwindling reservoirs, decreased groundwater recharge, and rapid population growth (EPA 2012). For example, the California Energy Commission (CEC) (2009, p. 22) predicts the combined effects of climate change, water use practices, and regional growth will expose San Diego County to greater risk of water shortfalls before 2050.

Aspects of arroyo toad life history and biology make them sensitive to potential climate-change-related impacts. Arroyo toads have a relative inability to disperse longer distances in order to occupy more favorable habitat conditions (*i.e.,* move up and down stream corridors, or across river basins). This reduced adaptive capacity for arroyo toad is a function of its highly specialized habitat requirements, the dynamic nature of its habitat, natural barriers such as steep topography at higher elevations, and extensive fragmentation (unnatural barriers) within and between river basins from reservoirs, urbanization, agriculture, roads, and the introduction of nonnative plants and predators. Climate change also could affect the distribution of pathogens and their vectors, exposing arroyo toads (potentially with weakened immune systems as a result of other environmental stressors) to new pathogens (Blaustein *et al.* 2001, p. 1808). Climate change may result in a range shift of the fungus *Batrachochytrium dendrobatidis* (Bd), (Pounds *et al.* 2006, p. 161; Bosch *et al.* 2007, p. 253), a virulent amphibian disease. Though Bd has the potential to infect and kill arroyo toads (Nichols 2003, entire), it is not currently found within the range of the arroyo toad and, therefore, is not expected to affect arroyo toads in the near future, though it remains a potential future threat. More information on the potential impact of Bd on arroyo toads is available in the ''Disease'' section of the Species Report (Service 2013, pp. 62–64).

We conclude that because climate change is likely to impact all river basins where the arroyo toad is known to occur in the future, it has a pervasive scope. We also conclude that climate change has a serious severity, as it has the potential to degrade habitat and reduce populations over a large proportion of the range of the arroyo toad. Therefore, we expect that climate change will have a high level of impact on the arroyo toad and its habitat throughout its range. See additional discussion in the ''Climate Change'' section of the Species Report (Service 2013, pp. 75–80).

Combination of Threats

Combinations of threats working in concert with one another have the ability to negatively impact species to a greater degree than individual threats operating alone. Multiple stressors can alter the effects of other stressors or act synergistically to affect individuals and populations (IPCC 2002, p. 22; Boone *et al.* 2003, pp. 138–143; Westerman *et al.* 2003, pp. 90–91; Opdam and Wascher 2004, pp. 285–297; Boone *et al.* 2007, pp. 293–297; Vredenburg and Wake 2007, p. 7; Lawler *et al.* 2010, p. 47; Miller *et al.* 2011, pp. 2360–2361).

Alterations in habitat caused by dam operation, urban development, and invasive plants interact with nonnative predators by increasing the suitability of habitat for nonnative predators. Artificially sustained flow regimes from urban runoff, agricultural runoff, or dam operation create ponds that make habitat more suitable for bullfrogs and African clawed frogs than for arroyo toads (Sweet 1992, p. 156; Riley *et al.* 2005, p. 1905). Bullfrogs are well-adapted to deep-water conditions in ponded areas above dams, and dam releases can introduce them to downstream habitats (CDFG 2005, p. 178). In these modified systems with deep pools that persist year-round, both bullfrogs and arroyo toads must rely on the same habitat for breeding, even though their biological needs differ. This situation allows bullfrogs more opportunity to prey on all of the life stages of arroyo toads. Furthermore, the introduction of nonnative plant species may enhance the probability of successful introduction of other nonnative species. For example, there is some evidence that the survival of bullfrogs is enhanced by the presence of nonnative aquatic vegetation, which provides habitat more suitable to bullfrogs (Maxell and Hokit 1999, p. 2.8).

Invasive, nonnative plants can interact with fire to exacerbate its effects on riparian habitats and natural stream flow. Large riparian corridors have historically acted as natural firebreaks

in southern California because of their low-lying topography and relative absence of flammable fuels. However, recent studies suggest that invasive plants are making riparian systems more fire-prone (Lambert *et al.* 2010). Giant reed and tamarisk are highly flammable, yet both species recover rapidly from fire by vigorous regrowth from below-ground plant parts. By contrast, cottonwoods, willows, and other native woody plants are much less tolerant of direct exposure to fire. Coffman *et al.* (2010, pp. 2723–2734) examined the regrowth rates of giant reed and nearby native woody vegetation following a 741-acre (300-ha) fire in the Santa Clara River watershed in 2005. Giant reed grew three to four times faster following the fire, and within 11 years, its density was 20 times greater than native species. This suggests that rapid regrowth of the highly flammable biomass creates an invasive plant-fire cycle that ultimately leads to a decline in native species in the ecosystem (Coffman *et al.* 2010, pp. 2730–2731).

Overall reductions in available habitat and population size through all the threats described in this document could cause further fragmentation of remaining arroyo toad populations. In particular, fragmentation can cause a ''habitat split,'' which is a separation between the two habitats critical for amphibian reproduction (Dixo *et al.* 2009, p. 1567). Habitat split may have an even larger effect on amphibian species with aquatic larval development and a terrestrial adult stage, such as the arroyo toad. Because of its dual habitat needs, the arroyo toad would be particularly susceptible to fragmentation that isolates breeding wetlands from upland areas that are the preferred habitats of adults. A number of studies have reported changes in genetic diversity associated with habitat fragmentation in amphibians (Young *et al.* 1996; Cushman 2006; Dixo *et al.* 2009). Genetic consequences of fragmentation center on a significant decrease in genetic diversity from (1) relatively low dispersal capabilities; (2) mortality when moving across roads and unsuitable habitats, which depresses growth rates; (3) narrow habitat tolerances; and (4) high vulnerability to pathogens, invasive species, climate change, and environmental pollutants (Cushman 2006, p. 232), ultimately leading to decreased survival or reproductive success.

Both dispersal ability and habitat availability determine how vulnerable arroyo toads are to reduced genetic diversity due to fragmentation. A study by Dixo *et al.* (2009, p. 1561) found that while a generalist species of amphibian (*Rhinella ornata*) was relatively tolerant of larger habitat fragments and maintained genetic diversity within them, gene flow in populations was negatively impacted in small patches of remaining habitat. This result implies that more specialized species like the arroyo toad would suffer even more severe genetic consequences from a fragmented and isolated landscape. In fact, arroyo toads have narrow environmental tolerances (highly specialized breeding, foraging, and shelter requirements), generally low dispersal abilities (Service 2013, pp. 6–7), and are vulnerable to being killed when burrowing into or crossing roads at night, all characteristics that exacerbate the negative effects of fragmentation, habitat loss, and habitat degradation. Combined with the small population sizes of arroyo toad occurrences, the species could find it difficult to persist while sustaining the impacts of urban, suburban, and rural development that have already resulted in severe arroyo toad habitat loss and fragmentation.

Effects of climate change may exacerbate other threats to the arroyo toad by increasing the frequency or severity of droughts which could result in increases in groundwater pumping and water diversion for urban and agriculture use, increasing runoff and erosion during extreme flood events, increasing the frequency or intensity of wildfire, and increasing the spread and virulence of pathogens.

Based on the best available scientific and commercial information, we find that the cumulative and combined effects of multiple factors acting on the arroyo toad are pervasive in scope, as they affect all arroyo toad occurrences, and are of serious severity, as these impacts could cause the loss or degradation of habitat and potential reductions in arroyo toad populations. Therefore, we conclude that combined effects of multiple factors pose a high level of threat to the arroyo toad and its habitat (Service 2013, pp. 84–85).

Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: ''Objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.'' However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' Therefore, recovery criteria should help indicate when we would anticipate an analysis of the five threat factors under section 4(a)(1) would result in a determination that a species is no longer an endangered species or threatened species because of any of the five statutory factors.

Thus, while recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of or remove a species from the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

The Service finalized a recovery plan for the arroyo toad in 1999 (Service 1999, pp. 1–119). The intent of the arroyo toad recovery plan was to prescribe recovery criteria that would demonstrate population stability and good habitat management over a period of years, which would indicate a substantially improved situation for arroyo toads. We anticipated later developing better information on the status and needs of arroyo toads, based on the surveys, research, and monitoring prescribed in the plan. Because the recovery plan incorporated an adaptive management approach to recovery, new information would be used to modify the recovery tasks and criteria, as appropriate (Service 1999, p. 108).

The overall objectives of the recovery plan are to prevent further loss of individuals, populations, and habitat critical for the survival of the species; and to recover existing populations to normal reproductive capacity to ensure viability in the long term, prevent

extinction, maintain genetic viability, and improve conservation status (Service 1999, p. 108). The general goal to achieve recovery of the species is to establish sufficient self-sustaining populations. The recovery plan describes 22 river basins in the coastal and desert areas of 9 counties along the central and southern coast of California, and the recovery plan divides the range of the arroyo toad into three large recovery units—Northern, Southern, and Desert. These recovery units were established to reflect the ecological and geographic distribution of the species and its current and historic range (Service 1999, pp. 71–72); we have since received updated information on the number and extent of river basins that support arroyo toads. The Recovery Plan did not address any occurrences in Baja California, Mexico, as very limited information on the species was available when the plan was drafted.

The Recovery Plan provides two criteria for determining when the arroyo toad should be considered for reclassification from endangered to threatened status: (1) That management plans have been approved and implemented on federally managed lands to provide for securing the genetic and phenotypic variation of the arroyo toad in each recovery unit by conserving, maintaining, and restoring the riparian and upland habitats used by arroyo toads for breeding, foraging, and wintering habitat; and (2) that at least 20 self-sustaining metapopulations or populations must be maintained at specific locations (Service 1999, pp. 75–76). The Recovery Plan states that self-sustaining metapopulations or populations are those documented as having successful recruitment (i.e., inclusion of newly matured individuals into the breeding population) equal to 20 percent or more of the average number of breeding adults in 7 of 10 years of average to above average rainfall amounts with normal rainfall patterns. Such recruitment would be documented by statistically valid trend data indicating stable or increasing populations. In addition, self-sustaining populations require no direct human assistance (such as captive breeding or rearing, or translocation of toads between sites). This does not include activities such as patrolling or closing of roads, campgrounds, or recreational areas, or maintaining stream crossings or fencing (Service 2013, p. 76).

The Recovery Plan also states that arroyo toad should be considered for delisting when the genetic and phenotypic variation of the arroyo toad throughout its range in California is secured by maintaining 15 additional self-sustaining populations of arroyo toads in coastal plain, coastal slope, desert slope, and desert river basins, including known populations outside of Federal jurisdiction (Service 1999, p. 76).

In our analysis of the status of the arroyo toad in the Species Report, we reviewed the 22 river basin occurrences that were identified at the time of listing (59 FR 64859; Service 1999, pp. 12–31). Of these 22 occurrences, 4 occurrences (Whitewater River, San Felipe Creek, Vallecitos Creek, and Pinto Wash basins) were determined to be reported erroneously, as examination of locality records, museum specimens, photographs and other records, as well as new visits to these river basins found no evidence that they had ever supported arroyo toads (Ervin *et al.* 2013, pp. 197—204). Additionally, the status of arroyo toads was unknown in 2 river basins (Santa Ana River and Otay River) identified for recovery actions in the recovery plan (Service 1999, pp. 23–24, 30).

The arroyo toad is currently extant or presumed to be extant at 16 occurrences on federal lands, including those known at listing, while the status of the Otay River Basin and Lower Santa Ana River Basin occurrences is still unknown (Service 2013, Table 1). However, arroyo toads were redetected in the San Jacinto River Basin, which was previously identified as part of the greater Santa Ana River Basin in the recovery plan (Service 1999, pp. 23–24); the split of the Greater Santa Ana River Basin into two occurrences adds an additional occurrence to those recognized in the recovery plan. Thus, at least one population within each of these 17 river basins supporting the arroyo toad identified at listing is currently extant or presumed to be extant on Federal land. Furthermore, the arroyo toad is extant at 5 additional river basins with no populations on Federal land. Updated information indicates some locations where erroneously reported, while the arroyo toad has been identified in three additional river basins. The arroyo toad continues to occur at 22 occurrences. While some of these locations differ from those identified in the downlisting criteria, the number of populations exceeds that identified to meet downlisting criteria in the recovery plan. Finally, management plans have been approved and are being implemented to help conserve, maintain, and restore habitat on Federal lands (Service 2013, pp. 87–94).

As stated above, the recovery plan also identifies the need for populations or metapopulations to be self-sustaining. We do not have statistically valid trend data of arroyo toad occurrences that would allow us to project whether populations are declining, stable, or increasing as described in the Recovery Plan. We will instead consider, based on the best available scientific and commercial data, whether available information indicates arroyo toads are self-sustaining. Available survey data does report that arroyo toads remain extant or presumed extant at 28 of the 35 occurrences rangewide, and have continued to reproduce and survive throughout their range without direct human assistance as described in the Recovery Plan. After reviewing recent survey data, we have found that, while threats identified at listing are ongoing, arroyo toads remain extant or presumed extant at all of the occurrences occupied at listing. The best available information indicates that these populations have become self-sustaining in part due to the management plans that are being implemented to address some of the impacts of 9 of the 12 current threats (excluding fire, drought, and climate change); these plans are managed through coordinated efforts with our partners. The majority of waterways that support arroyo toads occur on Federal land where efforts are in progress to minimize impacts to listed species. Each of the National Forests have land management plans that include measures to minimize impacts to listed species. MCB Camp Pendleton and Fort Hunter Ligget Military Reservation have developed INRMPs that include conservation measures that benefit the arroyo toad. Five HCPs have also been completed and provide protection to covered species, including arroyo toad. These plans help to minimize some of the impacts from currently identified threats for continued conservation of this taxon.

Furthermore, we are not aware of any river basins that have been confirmed as completely extirpated (no arroyo toads at any rivers or streams within the river basin) since listing. Therefore, absent the survey data required to fulfill the definition of self-sustaining in the 1999 Recovery Plan, we conclude that these factors are indicative of self-sustaining populations.

As stated above, the intent of the recovery plan was to prescribe recovery criteria that would at least demonstrate population stability and good habitat management over a period of years, which would indicate a substantially improved situation for arroyo toads. Despite the important progress made toward meeting the reclassification criteria outlined in the 1999 recovery plan, we recognize that we have not met the exact number of occupied river

basins identified in the plan. New information indicates that four of the river basins identified in the recovery plan were never occupied by arroyo toad, and there are eight river basins in the United States where no management plans have been approved or implemented on federally managed lands, in part because several of those basins do not contain a large amount of federally owned land. There are 17 river basins where management plans have been approved and implemented on federally managed land. At all those 17 occurrences, at least one population within the river basin has remained extant since the time of listing despite the threats still impacting arroyo toads and their habitat. Additionally, 5 occurrences on non-Federal lands have been acquired or conserved through other mechanisms, such as HCPs. We therefore conclude that we have met the overall intent of the downlisting criteria for the arroyo toad for the number of self-sustaining populations required for downlisting, in that these river basins demonstrate population stability and good habitat management over multiple years.

We also conclude that the arroyo toad has not met the delisting criteria, either by intent or by the letter of the plan, as we are only aware of management plans on non-Federal land at eight river basins, many of which overlap with the river basins that have management plans on Federal lands. Therefore, we have not achieved the delisting criteria of 15 additional self-sustaining arroyo toad populations outside of Federal jurisdiction. Further detail on our analysis of river basins and the recovery criteria is described in the Species Report (Service 2013, pp. 88–95).

Finding

An assessment of the need for a species' protection under the Act is based on whether a species is in danger of extinction or likely to become so because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. As required by section 4(a)(1) of the Act, we conducted a review of the status of the arroyo toad and assessed the five factors to evaluate whether the arroyo toad is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed information presented in the 2011 petition, information available in our files and gathered through our 90-day finding in response to this petition, and other available published and unpublished information. We also consulted with species experts and land management staff with the Forest Service, CDFW, the California Department of Parks and Recreation (CDPR), and HCP permittees who are actively managing for the conservation of the arroyo toad.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the exposure causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant the threat is. If the threat is significant, it may drive, or contribute to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

Since the arroyo toad was listed in 1994, new threats have been identified: invasive, nonnative plants (Factors A and E) and climate change (Factors A and E). However, some factors known to pose a threat to the arroyo toad and its habitat at the time of listing are no longer of concern (for example, new dam construction or collection for scientific or commercial purposes). Conservation activities and preservation of habitat have further reduced threats from mining and prospecting (Factors A and E), livestock grazing (Factors A and E), roads and road maintenance (Factors A and E), and recreation (Factors A and E).

Overall, a large number of stressors continue to impact the arroyo toad. We find that urban development, operations of dams and water diversions, climate change, and drought continue to pose a high level of threat to the continued existence of the arroyo toad (affecting many or most occurrences, likely to seriously degrade habitat or reduce species occurrences), and introduced predators pose a very high level of threat to the arroyo toad (affecting most occurrences and likely to destroy habitat or eliminate species occurrences).

We also find that fire and fire suppression, invasive plants, recreation, roads and road maintenance and agriculture pose a moderate level of threat to the arroyo toad. These threats are of lower severity and are less widespread than the high and very high-level threats. Livestock and mining and prospecting continue to pose a threat to the arroyo toad; however, these threats pose a low level of impact to the arroyo toad and its habitat, meaning they affect a limited number of occurrences and moderately or slightly degrade habitat or reduce occurrences.

Though some conservation measures have been put in place to decrease the current impacts of urban development, operation of dams, and introduced predators, some threats present ongoing challenges. For example, management of introduced predators has been difficult to implement once predators are established and requires ongoing eradication and management efforts. Drought and climate change are not easily amenable to management through existing regulatory or conservation actions, although their impacts can be reduced through improved management and reduction of other stressors. The combination of factors, such as the interaction between altered flow regimes caused by urban development and operation of dams and water diversions with the invasive potential of nonnative plants and introduced predators, can also increase the magnitude of the individual threats.

As stated above, many of the threats currently impacting the arroyo toad were also known at the time of listing. However, we also recognize that both the magnitude and the type of some threats impacting the arroyo toad have changed since the time of listing. In the case of urban development, agriculture, and operations of dams and water diversions, conservation actions and consultation through section 7 of the Act have decreased the severity of these threats since the time of listing, such that these threats cause alteration or degradation of habitat rather than the direct and permanent removal of habitat that was a concern at the time of listing. Conservation measures have overall decreased the impact of multiple other threats facing the arroyo toad, including invasive plants, introduced predator species, road and road maintenance,

recreation, and livestock grazing. Conservation efforts are being implemented on Federal lands in portions of 17 river basins supporting arroyo toad through the land management plans for each of the four southern California National Forests (Los Padres, Angeles, San Bernardino, and Cleveland), and through the INRMPs on MCB Camp Pendleton and Fort Hunter Liggett. In Mexico, 4 of 10 river basins are within or partially within a national park. Arroyo toads have remained extant or are presumed extant within the range they occupied at the time of listing. Furthermore, the known range of the species had been expanded with discovery of the Fort Hunter Liggett population in Monterey County.

We examined the downlisting criteria provided in the recovery plan for the arroyo toad (Service 1999). The downlisting recovery criteria state that for the arroyo toad to be reclassified to threatened, management plans must have been approved and implemented on federally managed lands, and at least 20 self-sustaining metapopulations or populations at specified locations on Federal lands must be maintained. Since the time of listing, we have found some of those populations were identified in error, as the river basins were never occupied by arroyo toads. Furthermore, current available information indicates that arroyo toads are persisting or are presumed to be persisting on Federal lands in 17 river basin occurrences and 5 additional occurrences on non-Federal lands, for a total of 22 extant or presumed extant occurrences in California. Portions of these occurrences are afforded protections from habitat destruction and from some effects of habitat alteration through current land management plans, INRMPs, and HCPs, and arroyo toads have persisted throughout their geographic range since listing, supporting that the occurrences are self-sustaining. Therefore, we find that the arroyo toad has met the intent of the criteria identified in the recovery plan for downlisting.

In conclusion, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. After review of the information pertaining to the five statutory factors, we find that the ongoing threats are not of sufficient imminence, intensity, or magnitude to indicate that arroyo toad is presently in danger of extinction throughout all its range. Although threats to the arroyo toad still exist and will continue into the foreseeable future, the Service, Forest Service, CDFW, CDPR, and HCP permittees are implementing conservation measures or regulatory actions to reduce the level of impact on the arroyo toad, and overall the magnitude of threats has decreased since the time of listing. We also find that the intent of the reclassification criteria in the recovery plan has been met. We therefore find the arroyo toad to be threatened throughout all its range.

Significant Portion of the Range

Having examined the status of the arroyo toad throughout all its range, we next examine whether the species is in danger of extinction in a significant portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that have no reasonable potential to be significant or in analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant'' *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

We consider the ''range'' of the arroyo toad to be from Fort Hunter Liggett in Monterey County, California, United States, to northwestern Baja California, Mexico. We are, therefore, proposing to revise the entry for the arroyo toad in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to reflect that the historical range in Mexico specifically pertains to Baja California and not the rest of the country. The historical range data in the List is non-regulatory in nature and is provided as information for the reader; this change therefore does not alter or limit application of the prohibitions of the Act or its implementation (50 CFR 17.11(d) and (e)). We consider a total of 28 river basins within this range to contain extant populations of arroyo toads. Since the toad was listed, several new populations have been found as a result of increased search efforts in Riverside County and Baja California; however, these areas were all within the historical range occupied by the species (WRCRCA 2006, p. 5; Lovich 2009, pp. 74–97). Since its listing, an arroyo toad population was discovered in the San Antonio River Basin at Fort Hunter Ligget, resulting in a northward expansion of the known range (by 93 mi (150 km)). However, this area was likely always part of the historical range of the species.

Habitat loss and other anthropogenic (human-caused) factors have resulted in the arroyo toad now being absent from several localities where it historically occurred. Jennings and Hayes (1994, p. 57) estimated that arroyo toads had been eliminated from 76 percent of their historical range prior to the time of listing. However, subsequent discoveries of new localities and remnant populations reduce this estimate to 65 percent (Lanoo 2005, p. 4). These disappearances from specific localities have created artificial gaps in the species' geographic range and resulted in a fragmented and patchy distribution. However, despite these gaps, arroyo toads remain extant in scattered populations throughout their historical range (Service 2013, Map 1). Overall, arroyo toads have not been extirpated from any of the 16 river basins known to be occupied at the time of listing (Service 2013, p. 94, Table 1).

Given the patchy distribution of arroyo toads throughout their range, no individual area is likely to be of greater biological or conservation importance than any other area. Additionally, river basins containing arroyo toad occurrences that are extant or presumed to be extant span the entire extent of the species' historical range. As such, we conclude that no major portion of the species' range has been lost, and that the lost historical range is not a significant portion of the arroyo toad's range.

We evaluated the current range of the arroyo toad to determine if potential threats to the species have any apparent geographic concentration. We examined

threats from urban development (Factors A and E), agriculture (Factors A and E), operation of dams and water diversions (Factors A and E), mining and prospecting (Factors A and E), livestock grazing (Factors A and E), roads and road maintenance (Factors A and E), recreation (Factors A and E), invasive, nonnative plants (Factors A and E), introduced predator species (Factor C), drought (Factors A and E), fire and fire suppression (Factors A and E), and climate change (Factors A and E). While the range of the arroyo toad could be divided by recovery units or by occurrences in the United States and occurrences in Mexico, we conclude that all occurrences are experiencing similar levels of threats. As discussed above, although the specific threats affecting the species may be different at individual sites or in different parts of the arroyo toad's range, on the whole threats are occurring throughout the species' range. While the types of threats affecting arroyo toads differ among occurrences, all are experiencing a similar level or intensity of threat and no portion is experiencing a greater level of risk than other portions; see the *Geographic Breakdown of Threats* section of the Species Report for more detail on threats in each Recovery Unit (Service 2013, pp. 86–88). In no portions of its range are threats significantly concentrated or substantially greater than in other portions of its range. Therefore, no portion of the arroyo toad's range warrants further consideration.

Conclusion

Based on the analyses above, we conclude that the arroyo toad is no longer in danger of extinction throughout all or a significant portion of its range, but instead is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. While no populations of the arroyo toad are at imminent risk of extirpation, ongoing threats continue to affect the likelihood of long-term persistence of the populations and the species such that the arroyo toad more appropriately meets the definition of a threatened species under the Act. Therefore, we find that the petitioned action is warranted, and we propose to reclassify the arroyo toad from an endangered species to a threatened species.

Effects of This Rule

If this proposed rule is made final, it would revise 50 CFR 17.11(h) to reclassify the arroyo toad from endangered to threatened on the List of Endangered and Threatened Wildlife. However, this reclassification does not significantly change the protections afforded this species under the Act. The statutory and regulatory protections provided pursuant to sections 9 and 7 of the Act remain in place. Anyone taking, attempting to take, or otherwise possessing an arroyo toad, or parts thereof, in violation of section 9 of the Act is subject to a penalty under section 11 of the Act, unless their action is covered under a special rule under section 4(d) of the Act. However, no 4(d) rules are proposed for the arroyo toad. Pursuant to section 7 of the Act, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the arroyo toad. This rule would not affect the critical habitat designation for the arroyo toad at 50 CFR 17.95(d).

Recovery actions directed at the arroyo toad will continue to be implemented as outlined in the Recovery Plan for this species (Service 1999, entire).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We determined we do not need to prepare an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2014–0007 or upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this proposed rule is the Pacific Southwest Regional Office in Sacramento, California, in coordination with the Ventura Fish and Wildlife Office in Ventura, California (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Toad, arroyo'' under ''Amphibians'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Amphibians							
*	*	*	*	*	*	*	
Toad, arroyo (=arroyo southwestern).	*Anaxyrus californicus*	U.S.A. (CA), Mexico (Baja California).	Entire	T	568	17.95(d)	NA
*	*	*	*	*	*	*	

Dated: March 16, 2014.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–06665 Filed 3–26–14; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 79, No. 59

Thursday, March 27, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 18, 2014

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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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.

Food Safety and Inspection Service

Title: Specified Risk Materials.

OMB Control Number: 0583–0129.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) This statute mandate that FSIS protect the public by ensuring that meat products are safe, wholesome, not adulterated, and properly labeled and packaged. FSIS requires that official establishments that slaughter cattle and or process carcasses or parts of cattle develop written procedures for the removal, segregation, and disposition of specified risk materials (SRMs). Establishments are also required by FSIS to maintain daily records sufficient to document the implementation and monitoring of their procedures for the removal, segregation, and disposition of SRMs, and any corrective actions taken to ensure that such procedures are effective.

Need and Use of the Information: FSIS will collect information from establishments to ensure meat and meat products distributed in commerce for use as human food do not contain SMRs.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3,512.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 123,916.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–06279 Filed 3–26–14; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 18, 2014.

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 April 28, 2014 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 20502. 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) 720–8958.

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.

Animal Plant & Health Inspection Service

Title: Swine Health Protection.

OMB Control Number: 0579–0137.

Summary of Collection: Under the Animal Health Protection Act (7 U.S.C. 8301 et seq.) the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests of livestock and to conduct programs to detect, control and eradicate pests and diseases of livestock.

The regulations in 9 CFR parts 71 and 85 facilitate the pseudorabies (PRV) eradication program and general swine health by providing requirements for moving swine interstate within a production system. (A production system consists of separate farms that each specialize in a different phase of swine production such as sow herds, nursery herds, and finishing herds. These separate farms, all members of the same production system, may be located in more than one State.) APHIS will collect information using several APHIS forms.

Need and Use of the Information: APHIS will collect information on the number of swine being moved in a particular shipment, the shipment's point of origin, the shipment's destination, and the reason for the interstate movement. The documents used to gather the necessary information include: (1) The Permit of Move Restricted Animals (VS Form 1–27); (2) the certificate of veterinary inspection; (3) an owner-shipper statement; (4) the accredited veterinarian's statement concerning embryos for implantation and semen shipments; (5) a swine production system health plan; (6) an interstate movement report and notification; and (7) the completion and recordkeeping of a Quarterly Report of Pseudorabies Control Eradication Activities (VS Form 7–1). The documents provide APHIS with critical information concerning a shipment's history, which in turn enables APHIS to engage in swift, successful trackback investigation when infected swine are discovered. PRV is further controlled through depopulation and indemnity using an Appraisal and Indemnity Claim Form (VS Form 1–23), herd management plan, movement permit and report of net salvage proceeds.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 5,120.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 35,696.

Animal and Plant Health Inspection Service

Title: Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm.

OMB Control Number: 0579–0165.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pest or diseases of livestock or poultry. The regulations under which the Animal and Plant Health Inspection Service (APHIS) conduct disease prevention activities are contained in Title 9, Chapter 1, Subchapter D, Parts 91 through 99. These regulations govern the importation of animals, birds and poultry, certain animal and poultry products, and animal germplasm. APHIS regulations ensure that horses, ruminants, swine, and dogs imported into the United States from regions of the world where screwworm is known to exist to be inspected and, if necessary, treated for infestation with screwworm.

Screwworm is a pest native to tropical areas of South America, the Indian subcontinent, Southeast Asia, tropical and sub-Saharan Africa, and the Arabian Peninsula that causes extensive damage to livestock and other warm-blooded animals.

Need and Use of the Information: APHIS requires the following documents to import horses, ruminants, swine, and dogs from regions where screwworm is known to exist: (1) An application for import or in-transit permit (VS 17–129); and (2) the health certificate. For the Application of Import the importer must describe the type, number, and identification of the animals or products to be exported. The origin, intended date and location of arrival, routes of travel, and destination of the animals or products must be listed on the application. The permit can only be used for the animals listed on the application. Horses, ruminants, swine, and dogs entering the United States from regions where screwworm is known to exist must be accompanied by a certificate, signed by a full-time salaried veterinary official of the exporting country, stating that these animals have been thoroughly examined, that they have been treated with ivermectin, that any visible wounds have been treated with coumaphos, and the animals appear to be free of screwworm.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 92.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 485.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–06274 Filed 3–26–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Evaluation of the Pilot Project for Canned, Frozen, or Dried Fruits and Vegetables in the Fresh Fruit and Vegetable Program (FFVP)

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection. This is a new information collection for the Evaluation of the Pilot Project for Canned, Frozen, or Dried Fruits and Vegetables in the Fresh Fruit and Vegetable Program (FFVP).

DATES: Written comments on this notice must be received by May 27, 2014.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of Agency functions, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimated burden of the proposed information collection, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including use of appropriate automated, electronic, mechanical, or other technological methods of data collection.

Written comments may be sent to: Richard Lucas, Acting Director, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Richard Lucas at 703–305–2576 or via email to *richard.lucas@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov*, and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: To request more information on the

proposed project or to obtain a copy of the data collection plans, contact Allison Magness, Ph.D., R.D. Social Science Research Analyst, Special Nutrition Evaluation Branch, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Allison Magness at 703–305–2576 or via email to *allison.magness@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Evaluation of the Pilot Project for Canned, Frozen, or Dried Fruits and Vegetables in the Fresh Fruit and Vegetable Program (FFVP).

Form Number: N/A.

OMB Number: 0584—NEW.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: The Fresh Fruit and Vegetable Program (FFVP) is intended to improve overall diet quality by teaching children more healthful eating habits. The FFVP began as a pilot project in four states pursuant to provisions of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). Schools selected to participate in the FFVP are reimbursed for providing free fresh fruits and vegetables to students during the school day, outside of normal school breakfast and lunch meals. Under Section 4304 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), the Richard B. Russell National School Lunch Act (NSLA) was amended to authorize the expansion of the FFVP to selected schools nationwide, including Guam, Puerto Rico, and the Virgin Islands. This was accomplished by incorporating the FFVP into its own section in the NSLA, Section 19, 42 U.S.C. 1770. The Agricultural Act of 2014, Section 4214, instructed the Secretary of Agriculture to carry out a pilot project in schools participating in FFVP in a minimum of five States to evaluate the impact of allowing schools to offer canned, frozen, or dried fruits and vegetables as part of FFVP for School Year 2014–2015. As part of the authorizing legislation, the Secretary was tasked in Section 4214(c) with conducting an evaluation of the pilot. The legislation states:

> ''1. The impacts on fruit and vegetable consumption at the schools participating in the pilot project;
>
> 2. The impacts of the pilot project on school participation in the Program and operation of the Program;
>
> 3. The implementation strategies used by the schools participating in the pilot project;
>
> 4. The acceptance of the pilot project by key stakeholders; and
>
> 5. Such other outcomes as are determined by the Secretary.''

The evaluation of the pilot project has two main objectives: (1) To examine how the pilot project is implemented, and (2) to estimate program impacts on participating students. To address these objectives, FNS has specified the following research categories for the evaluation:

1. Description of participating schools.
2. Description of participating children.
3. Description of the pilot project implementation.
4. Examine impacts of the pilot project on school environment.
5. Examine program impacts on children including consumption of different types of fruits and vegetables, consumption of other foods, nutritional status and attitudes towards fresh fruits and vegetables.

To evaluate program impacts on participating students, data will be collected from approximately 6,144 students in grades 4–6 in 100 public elementary schools in 5 States as well as parents, teachers, school food service managers and principals.

Affected Public: State, Local and Tribal Agency, individuals and households.

Type of Respondents: State Child Nutrition (CN) Directors, Directors of School Food Authorities (SFAs), School Principals, School food service managers, Teachers, Students (grades 4, 5 and 6), and Parents of sampled students.

Estimated Total Number of Respondents: 17,510.

Frequency of Response: State CN Directors will be asked to participate in two web surveys. State CN Directors in the impact sample will be asked to pull administrative twice. SFA Directors and Principals will each participate in one web survey. School food service managers will be interviewed in person two times on sample days for information about foods served in the pilot project and school meals (School Breakfast Program and National School Lunch Program) on those days. Teachers and parents of sampled students will each complete one short questionnaire. Sampled students will all participate in an individual dietary recall which may be assisted by a one-day food diary. A subsample of the students will complete a second dietary recall on a nonconsecutive day, which may be assisted by a one-day food diary.

Estimated Annual Responses: 17,754.

Estimate of Time per Respondent and Annual Burden: About 30 minutes (0.48 hours). The estimated time of response varies from 3 to 65 minutes depending on respondent group, as shown in table below. The total annual burden is 7,933.7 hours.

Affected public	Data collection activity	Respondents	Respondents						Non-respondents					Grand total
			Sample size	Estimated number of respondents	Frequency of response	Total annual responses	Average burden (hours per response)	Sub-total annual burden estimate (hours)	Estimated number of non-respondents	Frequency of response	Total annual responses	Average burden (hours per response)	Sub-total annual burden estimate (hours)	
State, local or tribal agency.	Self-Administered Web Survey.	State Agency Child Nutrition Directors.	54	49	2	98	0.3333	32.7	5	2	10	0.05	0.5	33.2
	Self-Administered Web Survey (Admin Data).	State Agency Child Nutrition Directors.	5	5	2	10	.5	5	0.0	2	0.0	0.05	0	5
	Self-Administered Web Survey.	School Food Authority (SFA) Directors.	185	100	1	100	0.5	50	85	1	85	0.05	4.3	54.3
	Self-Administered Web Survey.	School Principals	185	100	1	100	0.3333	33.3	85	1	85	0.05	4.3	37.6
	In-person Interviews	School Food Service Managers.	185	157	2	314	0.1667	52.3	28	2	56	0.05	2.8	55.1
	Self-Administered Questionnaire.	Teachers	768	691	1	691	0.0833	57.6	77	1	77	0.05	3.9	61.5
Individuals and households.	Self-Administered Mailed Questionnaire.	Parents	7680	6144	1	6144	0.0833	511.8	1536	1	1536	0.05	76.8	588.6
	Record-assisted Dietary Recalls.	Students	7680	6144	1	6144	1.0833	6655.8	1536	1	1536	0.05	76.8	6732.6
	Record-assisted Second Dietary Recall.	Students	768	614	1	614	0.5833	358.1	154	1	154	0.05	7.7	365.8
Grand Total All Respondents.	.....	.....	17510	14004	1.3333	14215	0.41	7756.6	3506	1.3333	3539	0.05	177.1	7933.7

Dated: March 14, 2014.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2014–06746 Filed 3–26–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Report of Supplemental Nutrition Assistance Program Benefit Issuance and Report of Commodity Distribution for Disaster Relief

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is a revision of a currently approved collection for the Supplemental Nutrition Assistance Program and the Food Distribution Program.

DATES: Written comments must be received on or before May 27, 2014.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding form FNS–292A may be sent to Dana Rasmussen, Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 506, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Mr. Rasmussen at (703) 305–2964 or via email to *Dana.Rasmussen@fns.usda.gov.*

Comments regarding form FNS–292B may be sent to Angela Kline, Chief, Certification Policy Branch, Program Development Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 812, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Ms. Kline at (703) 305–2896 or via email to *Angela.Kline@fns.usda.gov.*

Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov*, and follow the online instructions for submitting comments electronically. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 812 and Room 506. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Angela Kline, (703) 305–2495 or to Dana Rasmussen, (703) 305–1628.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Nutrition Assistance Program Benefit Issuances and Commodity Distribution for Disaster Relief.

OMB Number: 0584–0037.

Form Number(s): FNS–292A and FNS–292B.

Expiration Date: 7/31/2014.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) utilizes forms FNS–292A and FNS–292B to collect information not otherwise available on the extent of FNS-funded disaster relief operations. Form FNS–292A is used by State distributing agencies to provide a summary report to FNS following termination of disaster commodity assistance and to request replacement of donated foods distributed during the disaster or situation of distress. Form FNS–292B is used by State departments of social services to report to FNS the number of households and persons certified for Disaster Supplemental Nutrition Assistance Program (D–SNAP) benefits as well as the value of benefits issued.

Donated food distribution in disaster situations is authorized under Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c); Section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431); Section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a–1); Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); and by Sections 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180). Program implementing regulations are contained in Part 250 of Title 7 of the Code of Federal Regulations (CFR). In accordance with 7 CFR 250.69(f), distributing agencies shall provide a summary report to the FNS within 45 days following termination of the disaster assistance.

Disaster assistance through SNAP is authorized by Sections 402 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) and the temporary emergency provisions contained in Section 5 of the Food and Nutrition Act of 2008, and in 7 CFR Part 280 of the SNAP regulations. In accordance with 7 CFR 274.4, State agencies shall keep records and report SNAP participation and issuance totals to FNS.

Affected Public: State agencies that administer FNS disaster food relief activities.

Estimated Number of Respondents: 55.

Number of Responses per Respondent: The number of responses annually is estimated to be 4 responses per State agency (2 reporting and 2 recordkeeping).

Respondent	Estimated number of respondents	Responses annually per respondent	Total annual responses (Col. bxc)	Estimated avg. number of hours per response	Estimated total hours (Col. dxe)
(a)	(b)	(c)	(d)	(e)	(f)
Reporting Burden					
State Agencies—Commodity Distribution Form FNS–292A	55	1.00	55	0.4175	22.96

Respondent (a)	Estimated number of respondents (b)	Responses annually per respondent (c)	Total annual responses (Col. bxc) (d)	Estimated avg. number of hours per response (e)	Estimated total hours (Col. dxe) (f)
State Agencies—SNAP Benefit Issuance Form FNS–292B	55	1.00	55	0.4175	22.96
Total Reporting Burden	55	2.00	110	0.8350	45.92

Respondent (a)	Estimated number of recordkeepers (b)	Number of records per recordkeeper (c)	Total annual records (Col. bxc) (d)	Estimated avg. number of hours per record (e)	Estimated total hours (Col. dxe) (f)
Record Keeping Burden					
State Agencies—Commodity Distribution Form FNS–292A	55	1.00	55	0.084	4.62
State Agencies—SNAP Benefit Issuance Form FNS–292B	55	1.00	55	0.084	4.62
Total Recordkeeping Burden	55	2.00	110	0.168	9.24
Total Burden	55	.....	110	.....	55.16

Estimated Total Annual Responses: 220. Due to calculation errors, the total annual responses increased from 110 to 220 since the last submission. This increase is due to adjustments for recordkeeping responses.

Estimated Time per Response: Public reporting burden for this collection of information is estimated to average 25 minutes (0.4175 hours) per form (FNS–292A and FNS–292B) per respondent (total of 50 minutes (.84 hours) per respondent). Recordkeeping burden for the State agencies is estimated to be 5 minutes (.084 hours) per form (FNS–292A and FNS–292B) per respondent (total of 10 minutes (.167 hours) per respondent).

Estimated Total Annual Burden: 3,300 minutes (55 hours), including a total reporting burden of 2,750 minutes (46 hours) and a total recordkeeping burden of 550 minutes (9 hours).

COMBINED REPORTING AND RECORDKEEPING BURDEN

Affected public	Instrument	Estimated number of respondents	Responses annually per respondent	Total annual responses (Col. bxc)	Estimated avg. number of hours per response	Estimated total hours (Col. dxe)
55 State Agencies Reporting/Recordkeeping.	FNS 292 A	55	2	110	0.4175	45.92
55 State Agencies Reporting/Recordkeeping.	FNS 292 B	55	2	110	0.084	9.24
Grand Total Reporting & Recordkeeping Burden Hours.		55	.....	220	.....	55.16

Dated: March 18, 2014.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2014–06749 Filed 3–26–14; 8:45 am]

BILLING CODE 3410–30–P

BROADCASTING BOARD OF GOVERNORS

Proposed Information Collection Reinstatement; Comment Request

AGENCY: The Broadcasting Board of Governors.

ACTION: Proposed information collection reinstatement; comment request.

SUMMARY: The Broadcasting Board of Governors (BBG), as part of its continuing effort to reduce paperwork and respondent burden, invites public comment on an information collection titled, ''Surveys and Other Audience Research for Radio and TV Marti.'' This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)].

The information collection activity involved with this program is conducted pursuant to the mandate given to the BBG to provide for the broadcasting of accurate information to the people of Cuba, and other purposes, under Public Law 98–111, the Radio Broadcasting to Cuba Act, dated, October 4, 1983, and Public Law 101–246, dated, February 16, 1990.

DATES: Comments must be submitted by April 28, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Luer, Chief, Office of Administration, BBG, Room 1274, 330 Independence Avenue SW, Washington, DC 20237, telephone (202) 203–4608, email address *cluer@bbg.gov*

Copies: Copies of the Request for Clearance, supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the Chief of the Office of Administration for BBG.

SUPPLEMENTARY INFORMATION: An Agency may not conduct or sponsor, and a person is not required to respond

to, a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register**, 79 FR 3777, on January 23, 2014.

Annual estimated burden for this proposed collection of information is estimated to average 3 hours per response for 96 Focus Group Studies respondents, 3 hours per response for 30 Audience Panels respondents, and 15 minutes (0.25 of an hour) per response for 300 Structured Surveys respondents, including average estimated time for travel to and from the facility where research activities are conducted. Respondents will be required to respond only one time for Focus Group Studies and Structured Surveys, but three 3 times for Audience Panels. Comments are requested on the proposed information collection concerning:

(a) Whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information collection has practical utility;

(b) the accuracy of the Agency's burden estimates;

(c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate, or any other aspect of this collection of information, to Mr. Chris Luer, the BBG Clearance Officer, IBB/A, Room 1274, 330 Independence Avenue SW., Washington, DC 20237, telephone (202) 203–4595, e-mail address *cluer@bbg.gov.*

Current Actions: BBG is requesting reinstatement of this collection for a three-year period and approval for a revision to the burden hours.

Title: Surveys and Other Audience Research for Radio and TV Marti.

Abstract: Data from this information collection are used by BBG's Office of Cuba Broadcasting (OCB) in fulfillment of its mandate to evaluate effectiveness of Radio and TV Marti operations by estimating the audience size and composition for broadcasts. This information collection is also used to assess signal reception, credibility, and relevance of programming.

Proposed Frequency of Responses

Total Annual Responses – 96 Focus Group Studies + 90 Audience Panel + 300 Structured Surveys = 486

Average Hours per Response – 3 Focus Group Studies + 3 Audience Panel + .25 Structured Surveys = (288) + (270) + (75)

Total annual burden—633 hours

Dated: March 24, 2013.

Chris Luer,

Chief, Office of Administration.

[FR Doc. 2014–06799 Filed 3–26–14; 8:45 am]

BILLING CODE 8610–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Dates: Date and Time: Friday, April 11, 2014, 3:00 p.m. [EST].

Place: Via Teleconference. Public Dial-in 1–877–446–3914; Listen Line Code: 7775002.

TDD: Dial Federal Relay Service 1–800–977–8339 give operator the following number: 202–376–7533—or by email at *ero@usccr.gov*.

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 New Hampshire Advisory Committee to the Commission will convene via conference call. The purpose of the meeting is project planning to discuss potential speakers for briefings on human trafficking and voting rights. The Advisory Committee will also review a summary report on the roundtable briefing meeting held on September 30, 2013 in which the Advisory Committee heard from advocates, experts, and government officials on human trafficking, racial profiling, voting rights, and mental health issues in New Hampshire.

The meeting will be conducted via conference call. Members of the public, including persons with hearing impairments, who wish to listen to the conference call should contact the Eastern Regional Office (ERO), ten days in advance of the scheduled meeting, so that a sufficient number of lines may be reserved. You may contact the Eastern Regional Office by phone at 202–376–7533. Persons with hearing impairments would first call the Eastern Regional Office at the number listed above. Those contacting ERO will be given instructions on how to listen to the conference call.

Members of the public who call-in can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Monday, May 12, 2014. 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 Melanie Reingardt at *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

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 on March 24, 2014.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–06835 Filed 3–26–14; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–27–2014]

Proposed Foreign-Trade Zone—Lake County, Florida, Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of Leesburg to establish a foreign-trade zone within Lake County, Florida, adjacent to the Leesburg Customs and Border Protection (CBP) user fee airport, under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new ''subzones'' or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone project. The application was submitted pursuant to

the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on March 21, 2014. The applicant is authorized to make the proposal under Florida Statutes, Title XIX, Chapter 288, Part III.

The applicant's proposed service area under the ASF would be Lake County, Florida. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Leesburg CBP user fee airport.

The proposed zone would include two ''magnet'' sites: *Proposed Site 1* (818 acres)—Leesburg International Airport, 8807 Airport Boulevard, Leesburg; and, *Proposed Site 2* (662 acres)—Leesburg Industrial and Technology Park, located north of County Road 48, east of the Florida Turnpike, and north and south of County Road 470, Leesburg. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted.

The application indicates a need for zone services in the Lake County, Florida, area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific production approvals are not being sought at this time. Such requests would be made to the FTZ Board on a case-by-case basis.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is May 27, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 10, 2014.

A copy of the application 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 FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or at (202) 482–2350.

Dated: March 21, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–06833 Filed 3–26–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket B–24–2013]

Foreign-Trade Zone (FTZ) 169—Manatee County, Florida, Application for Expanded Production Authority, ASO, LLC (Subzone 169A), Opening of Comment Period on New Evidence

An application has been submitted to the Foreign-Trade Zones Board (the Board) by ASO, LLC (ASO), operator of Subzone 169A, for its facility located in Sarasota, Florida. The facility is used for the production of plastic and textile fabric adhesive bandages. ASO's request would add certain foreign-status textile products to ASO's existing scope of authority.

On March 14, 2014, ASO made a submission to the FTZ Board that included new evidence in response to the examiner's preliminary recommendation not to approve the requested expansion of FTZ production authority. Public comment is invited on ASO's new submission through April 28, 2014. Rebuttal comments may be submitted during the subsequent 15-day period, until May 12, 2014. Submissions shall be addressed to the FTZ Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 21013, 1401 Constitution Ave. NW., Washington, DC 20230.

A copy of ASO's March 14, 2014, submission will be available for public inspection at the address above, 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* or (202) 482–1367.

Dated: March 21, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–06856 Filed 3–26–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–101–2013]

Foreign-Trade Zone 230—Piedmont Triad Area, North Carolina, Authorization of Production Activity, Sonoco Display and Packaging, (Kitting—Gift Sets), Rural Hall and Winston-Salem, North Carolina

On November 19, 2013, the Piedmont Triad Partnership, grantee of FTZ 230, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Sonoco Display and Packaging, in Rural Hall and Winston-Salem, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 73824, 12–9–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14, and further subject to a restriction requiring that all foreign bags, handbags, clutches, and cases of textile materials (classified within HTSUS4202.12.4000, 4202.12.6000, 4202.12.8020, 4202.12.8030, 4202.12.8040, 4202.12.8060, 4202.12.8070, 4202.12.8080, 4202.22.4020, 4202.22.4030, 4202.22.4040, 4202.22.4500, 4202.22.6000, 4202.22.8030, 4202.22.8050, 4202.22.8080, 4202.32.4000, 4202.32.8000, 4202.32.9530, 4202.32.9550, 4202.32.9560, 4202.92.0805, 4202.92.0807, 4202.92.0809, 4202.92.1500, 4202.92.2000, 4202.92.3016, 4202.92.3020, 4202.92.3031, 4202.92.3091, 4202.92.6091, 4202.92.9026, and 4202.92.9036) used in the production activity must be admitted to the zone in privileged foreign status (19 CFR 146.41) or domestic (duty-paid) status (19 CFR 146.43).

Dated: March 20, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–06836 Filed 3–26–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–100–2013]

Foreign-Trade Zone 20—Suffolk, Virginia, Authorization of Production Activity, Grandwatt Electric Corporation, (Portable Light Towers and Generator Sets), Suffolk, Virginia

On November 21, 2013, the Virginia Port Airport Authority, grantee of FTZ 20, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Grandwatt Electric Corporation in Suffolk, Virginia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 72861–72862, 12–4–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: March 21, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–06855 Filed 3–26–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–5–2014]

Approval of Subzone Status, Apple Inc./GT Advanced Technologies Inc., Mesa, Arizona

On January 14, 2014, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of Mesa, grantee of FTZ 221, requesting subzone status subject to the existing activation limit of FTZ 221, on behalf of Apple Inc./GT Advanced Technologies Inc., in Mesa, Arizona.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (79 FR 3778, 01/23/2014). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 221A is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 221's pre-existing activation limit.

Dated: March 19, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–06841 Filed 3–26–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–917]

Laminated Woven Sacks From the People's Republic of China: Continuation of Countervailing Duty Order

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC) that revocation of the countervailing duty (CVD) order on laminated woven sacks from the People's Republic of China (PRC) would likely lead to a continuation or recurrence of net countervailable subsidies and material injury to an industry in the United States, the Department is publishing a notice of continuation of the CVD order.

DATES: *Effective Date:* March 27, 2014.

FOR FURTHER INFORMATION CONTACT: Toni Page or Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1398 and (202) 482–5255, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2013, the Department initiated a sunset review of the order, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act) [1] and 19 CFR 351.218(c). As a result of its review, the Department determined that revocation of the order on laminated woven sacks from the PRC would likely lead to a continuation or recurrence of net countervailable subsidies and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[2] On March 18, 2014, the ITC published its determination pursuant to section 751(c) of the Act that revocation of the CVD order on laminated woven sacks from the PRC would lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The merchandise covered by this order is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (BOPP) or to an exterior ply of paper that is suitable for high quality print graphics; ''Paper suitable for high quality print graphics,'' as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves),

[1] *See Initiation of Five-Year (''Sunset'') Reviews,* 78 FR 39256 (July 1, 2013).

[2] *See Laminated Woven Sacks From the People's Republic of China: Final Results of the Expedited Sunset Review of the Countervailing Duty Order,* 78 FR 69369 (November 19, 2013).

[3] *See Laminated Woven Sacks From China* (Investigation Nos. 701–TA–450 and 731–TA–1122 (Review), 79 FR 15140 (March 18, 2014)).

laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500.

If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the CVD order would likely lead to a continuation or recurrence of net countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), the Department hereby orders the continuation of the CVD duty order on laminated woven sacks from the PRC. U.S. Customs and Border Protection will continue to collect countervailing duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of the continuation.

The five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: March 20, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–06857 Filed 3–26–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD180

Marine Mammals; File No. 18534

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center (ASLC; Responsible Party, Tara Jones, Ph.D.) 301 Railway Avenue, P.O. Box 1329, Seward, AK 99664, has applied in due form for a permit to conduct research on captive Steller sea lions (*Eumetopias jubatus*) of the Eastern stock.

DATES: Written, telefaxed, or email comments must be received on or before April 28, 2014.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 18534 from the list of available applications.

These documents are also available upon written request or by appointment in the following office:

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.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include File No. 18534 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The ASLC requests a five-year permit to investigate reproductive physiology of captive adult Steller sea lions and survival, growth, and physiology of captive-bred offspring. The ASLC also proposes to deploy instruments to develop and validate methods for monitoring wild Steller sea lions. Research would be conducted on two adult males, up to six adult females, one pup and up to nine additional offspring (up to 18 research animals total), and would include the following activities: mass and morphometric measurements; ultrasound; sedation, and anesthesia; blood sampling and administration of Evan's blue dye and deuterium oxide; feces, urine, saliva, semen, and milk collection; video/audio recordings; swabs; radiographs; dietary supplements; blubber biopsy; and attachment and proximity to instrumentation. ASLC also requests authorization to transfer to and import from approved facilities up to six Steller sea lions from the Eastern Stock. ASLC requests up to four research-related mortalities over the course of the permit and one naturally caused mortality for each animal. No research would occur on wild populations or affect non- target species.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 21, 2014.

Perry F. Gayaldo,

Acting Deputy, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–06804 Filed 3–26–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD003

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

[FWS–R8–ES–2013–N252]

Bay Delta Habitat Conservation Plan and Natural Community Conservation Plan, Sacramento, CA; Draft Environmental Impact Report/ Environmental Impact Statement, Receipt of Applications; Extension of Comment Period

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration,

Commerce; Fish and Wildlife Service and Bureau of Reclamation, Interior.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The National Marine Fisheries Service, Bureau of Reclamation, and the Fish and Wildlife Service are extending the comment period on the Draft Bay Delta Conservation Plan and Natural Community Conservation Plan (BDCP, or the Plan) and Draft BDCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS). In response to public requests, the comment period is being extended for an additional 60 days.

DATES: Comments on the Draft BDCP and Draft EIR/EIS must be received or postmarked by 5 p.m. Pacific Time on June 13, 2014.

ADDRESSES: To view or download the Draft BDCP and Draft EIR/EIS, or for a list of locations to view hardbound copies, go to *www.baydeltaconservationplan.com.*

You may submit written comments by one of the following methods:

1. By email: Submit comments to *bdcp.comments@noaa.gov.*

2. By hard-copy: Submit comments by U.S. mail, or by hand-delivery, to Ryan Wulff, National Marine Fisheries Service, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Ryan Wulff, National Marine Fisheries Service, 916–930–3733; Lori Rinek, Fish and Wildlife Service, 916–930–5652; or Theresa Olson, Bureau of Reclamation, 916–414–2433.

SUPPLEMENTARY INFORMATION: The comment period is being extended for the jointly issued Draft Bay Delta Conservation Plan (BDCP) and Natural Community Conservation Plan and Draft BDCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS). On December 13, 2013, a 120-day public comment period was opened through notification in the **Federal Register** (78 FR 75939). In response to requests from the public, the comment period is being extended for an additional 60 days. The comment period will now officially close on June 13, 2014, at 5 p.m. Pacific Time. A draft Implementing Agreement is still under preparation and will be made available to the public for review and comment in mid 2014. It will be posted at *www.baydeltaconservationplan.com* as soon as it is available.

Background

For background information, see the December 13, 2013, **Federal Register** notice (78 FR 75939).

Public Comments

Submitting comments to the email and hard-copy addresses identified in the **ADDRESSES** section of this notice will constitute effective filing of the California Environmental Quality Act comments on the EIR portion of the EIR/EIS. The National Marine Fisheries Service, Bureau of Reclamation, and the Fish and Wildlife Service are furnishing this notice to allow other agencies and the public an extended opportunity to review and comment on these documents. All comments received will become part of the public record for this action.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 24, 2014.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: February 27, 2014.

Paul McKim,

Acting Deputy Regional Director, Pacific Southwest Region, Fish and Wildlife Service.

Dated: March 13, 2014.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2014–06805 Filed 3–26–14; 8:45 am]

BILLING CODE 3510–22–P; 4310–MN–P; 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XD206]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Atlantic Mackerel, Squid, and Butterfish (MSB) Advisory Panel (AP) will meet to review recent fishery performance and develop Fishery Performance Reports and/or other recommendations for the Atlantic Mackerel, Squid, and Butterfish fisheries in preparation for the Council's setting of 2015 specifications at the June 2014 Council meeting.

DATES: The meeting will be held on Monday, April 14, 2014, from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held via webinar, but anyone can also attend at the Council office address (see below). The webinar link is: *http://mafmc.adobeconnect.com/msbap2015specs/*. Please call the Council in advance if you wish to attend at the Council office.

Council Address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to create Fishery Performance Reports by the Council's Atlantic Mackerel, Squid, and Butterfish (MSB) Advisory Panel (AP). The intent of these reports is to facilitate structured input from the Advisory Panel members into the Atlantic Mackerel, Squid, and Butterfish specifications process.

Although non-emergency issues not contained in this notice may come before this group for discussion, those issues may not be the subject of formal action during this meeting.

Special Accommodations:

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 24, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–06780 Filed 3–26–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2013–0041]

Glossary Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is initiating a Glossary Pilot Program to study how the inclusion of a glossary section in the specification of a patent application at the time of filing the application improves the clarity of the patent claims and facilitates examination of patent applications by the USPTO. Currently, there is no requirement that a glossary section be provided by an applicant as part of the patent application specification. In order to participate in the Glossary Pilot Program, an applicant will be required to include a glossary section in the patent application specification to define terms used in the patent application. The pilot is testing to see if definitions in the glossary section enhance patent quality and improve the clarity of patent claims, by enabling the USPTO and the public to more fully understand the meaning of the patent claims. This notice outlines conditions, eligibility requirements, and guidelines of the pilot program, which will govern acceptance of an application into, and examination under, the Glossary Pilot Program. Applications accepted into this pilot program will receive expedited processing by placing them on an examiner's special docket prior to the first Office action, and will have special status up to issuance of a first Office action.

DATES: *Effective Date:* June 2, 2014.

Duration: The Glossary Pilot Program will run for six months from its effective date or until the USPTO accepts 200 grantable petitions under this pilot program, whichever occurs first. The USPTO may extend the pilot program (with or without modification) for an additional six months. The USPTO reserves the right to terminate the pilot program at any time.

FOR FURTHER INFORMATION CONTACT: Seema Rao, Director Technology Center 2100, by telephone at 571–272–0800; by facsimile transmission to 571–273–0800; or by electronic mail at *seema.rao@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 4, 2013, the White House Office of the Press Secretary issued a press release titled ''FACT SHEET: White House Task Force on High-Tech Patent Issues,'' which listed a series of Legislative Recommendations and Executive Actions ''designed to protect innovators from frivolous litigation and ensure the highest-quality patents in our system.'' *See* The White House Web site at *http://www.whitehouse.gov/the-press-office/2013/06/04/fact-sheet-white-house-task-force-high-tech-patent-issues.* Executive Action 2 relates to developing strategies to improve claim clarity, specifically with regard to functional claiming in the context of software, such as by the use of glossaries in patent application specifications.

In response to this executive action, the USPTO sought public input on the idea of using glossaries to improve claim clarity, particularly a pilot program focused on the use of glossaries in patent applications. The USPTO held a Software Partnership Meeting on October 17, 2013, at U.C. Berkeley School of Law about Strategies for Improving Claim Clarity through the use of glossaries that included presentations from the USPTO and members of the public. The meeting announcement, agenda, presentations, and video transcript of the meeting are available on the USPTO Web site at *http://www.uspto.gov/patents/init_events/glossary_initiative.jsp.* Eight written comments were received and also are available on the Web site at the above link. After considering the public input, the USPTO designed the Glossary Pilot Program outlined herein to be flexible, accommodate various application drafting styles, and provide useful glossary information for examiners to utilize during examination.

II. Glossary Pilot Program Structure

Applicants who wish to participate in the Glossary Pilot Program must provide, upon the filing date of an eligible patent application: (1) A petition to make special using Form PTO/SB/436 (titled ''Certification And Petition To Make Special Under The Glossary Pilot Program''); and (2) a formal glossary section as part of the patent application specification. Form PTO/SB/436 is available at *http://www.uspto.gov/patents/init_events/glossary_initiative.jsp.* Use of this form will help the USPTO to quickly identify Glossary Pilot Program submissions and facilitate timely processing of such submissions. The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), Form PTO/SB/436 does not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995.

No fee is required for submission of petitions using Form PTO/SB/436. The $130.00 fee for a petition under 37 CFR 1.102 (other than those enumerated in 37 CFR 1.102(c)) is hereby *sua sponte* waived for petitions to make special based upon the procedure specified in this notice.

As explained further in Section III of this notice, the glossary section should contain definitions of claim terms as well as any other terms applicant deems appropriate that satisfy the requirements of this notice. The requirements placed upon glossary definition submissions are designed to promote participation by providing participants the flexibility to select which terms to define and how best to define the selected terms. Receiving a variety of glossary submissions from different participants will afford the USPTO the opportunity to evaluate their effectiveness in clarifying claim language. The pilot program will be limited to certain software-related technology examination areas within the USPTO.

The Glossary Pilot Program will run for six months or until the USPTO accepts 200 grantable petitions under this pilot program, whichever occurs first. Applications eligible for participation in the pilot program must be classified in technological fields that fall under the examination jurisdiction of USPTO Technology Centers 2100, 2400, and 2600 or the Business Methods area of Technology Center 3600. In order for the USPTO to accept an application into the pilot program, the application must meet all of the conditions and requirements set forth in Section III of this notice, and applicant also must submit a completed Form PTO/SB/436. The USPTO may reevaluate the workload and resources needed to administer the pilot program at any time. The USPTO will provide notice of any substantive changes to the program at least thirty (30) days prior to implementation of the change.

Applications that meet the conditions and requirements of this notice will be accepted into the Glossary Pilot Program. Although new patent applications are normally taken up for examination in the order of their United States filing date, applications accepted into this pilot program will receive expedited processing by placing them on an examiner's special docket prior to the first Office action, and will have special status up to issuance of a first Office action. These applications will then be placed on the examiner's regular amended docket after applicant's

response to the first Office action, unless designated special in accordance with another established procedure (e.g., Accelerated Examination, Prioritized Examination, Special Based on Applicant's Age, etc.).

III. Conditions and Requirements for Participation in the Glossary Pilot Program

A. *Conditions:* A petition to make special under the Glossary Pilot Program (Form PTO/SB/436) will be granted in an application if the requirements in Section III.B and the following conditions are all satisfied:

(1) The application must be: (a) An original, non-reissue, non-provisional utility application filed under 35 U.S.C. 111(a) that does not claim the benefit of a prior filed U.S. application (i.e., cannot be a continuation or divisional application), except the application can claim benefit of a provisional application; or (b) a continuation-in-part application claiming the benefit of a prior non-provisional utility application under 35 U.S.C. 120 or 365(c) filed for the purposes of providing a glossary in accordance with this program. The application cannot be an international application, national stage application filed under 35 U.S.C. 371, design application, or plant application. Further, the application cannot also participate in any Patent Prosecution Highway (PPH) program.

(2) Upon filing, the application must contain a specification in the English language including a glossary section that meets all the Requirements in section III.B of this notice.

(3) Upon filing, all benefit and priority claims must be included in an application data sheet (see 37 CFR 1.76 and 1.78). If the application claims priority to one or more foreign applications, a copy of each such foreign application must be submitted concurrently with the filing of the application. If any prior-filed application (U.S. or foreign) is not written in the English language, an English-language translation of such prior-filed application must be submitted concurrently with the filing of the application with a statement that the translation is accurate. This requirement is intended to assist the examiner, by ensuring that the examiner is timely provided with the documentation needed to confirm that the definitions in the glossary are supported in the priority document(s). In order to make and perfect benefit and priority claims, the application must still satisfy all applicable conditions and regulations, including 37 CFR 1.55, 1.76, and 1.78.

(4) A completed Form PTO/SB/436 (titled ''Certification and Petition To Make Special Under the Glossary Pilot Program'') must be filed concurrently with the filing of the application. Form PTO/SB/436 is available at *http://www.uspto.gov/patents/init_events/glossary_initiative.jsp.*

(5) Upon filing, the application must contain at least one claim, but no more than four independent claims, and thirty total claims. The application must not contain any multiple dependent claims. For applications containing more than four independent claims or thirty total claims, or any multiple dependent claims, applicant must file a preliminary amendment in compliance with 37 CFR 1.121 canceling the excess claims and/or the multiple dependent claims at the time the application is filed.

(6) In order to be eligible for the Glossary Pilot Program, the application must be classified in one of the U.S. patent classifications (USPCs) examined by USPTO Technology Centers 2100, 2400, or 2600 or the Business Methods area of Technology Center 3600 when the petition decision is rendered. The USPTO Office of Patent Classification provides listings of the USPCs that are examined by particular art units, and makes these listings available at *http://www.uspto.gov/patents/resources/classification/index.jsp*, under the heading ''Relationships between classifications and organizations.'' The applicant may not know the classification of the application at the time of filing the application. The USPTO will determine whether this requirement is satisfied once the application is in condition for examination and the petition is being decided.

(7) The application and all follow-on papers must be filed via EFS-Web.

(8) If applicant also requests advancement of examination based on another established procedure (e.g., Accelerated Examination, Prioritized Examination, Special Based on Applicant's Age, etc. in addition to the Glossary Pilot Program), then the application must satisfy all of the conditions and requirements of the other procedure(s), including payment of any fees required by the other procedure(s), in addition to the conditions and requirements specified herein for the Glossary Pilot Program. For example, if applicant is requesting participation in both the Glossary Pilot and Accelerated Examination programs, then the application must comply with the lower claim cap (i.e., 3 or fewer independent claims and no more than 20 claims total) for the Accelerated Examination program in order to be accepted into both programs.

B. *Requirements:* A timely petition to make special under the Glossary Pilot Program (Form PTO/SB/436) will be granted in an application that satisfies all the conditions of Section III.A and complies with all the following requirements:

(1) The glossary must be placed at the beginning of the detailed description portion of the original specification, identified with a heading, and presented on filing the application. The glossary cannot be, for example, a separate paper, an appendix to the specification, or part of an information disclosure statement. Additionally, the glossary cannot be a follow-on submission made after the filing date of the application.

(2) The glossary definitions cannot rely upon other parts of the specification for completeness, or upon any incorporation by reference to other sources such as patents, published patent applications, or non-patent literature references.

(3) A glossary definition establishes limits for a term by presenting a positive statement of what the term means. A glossary definition cannot consist solely of a statement of what the term does not mean, and cannot be open-ended.

(4) Definitions provided in the glossary cannot be disavowed elsewhere in the application. For example, a definition cannot be presented in the glossary along with a sentence that states that the definition is not to be considered limiting.

(5) A glossary definition may include the usage of examples, synonyms, and exclusions. However, the glossary definition cannot consist solely of a list of examples, synonyms, and/or exclusions.

(6) The glossary should include definitions that will assist in clarifying the claimed invention and creating a clear application file wrapper record. Suggestions for definitions include key claim terminology (such as a term with a special definition), substantive terms within the context of the invention, abbreviations, acronyms, evolving technological nomenclature, relative terms, terms of degree, and functional terminology including 35 U.S.C. 112(f) functional limitations (previously 35 U.S.C. 112, sixth paragraph). If a definition is provided in the glossary for any 35 U.S.C. 112(f) functional limitations, then an additional suggestion would be to include the identification of the corresponding structure for performing the claimed function, in addition to any disclosure of the structure elsewhere in the specification.

C. *Decision on Petition To Make Special Under the Glossary Pilot Program (Form PTO/SB/436):* If applicant files a petition using Form PTO/SB/436, the USPTO will decide the petition once the application is ready for examination. If the petition is granted, the application will receive expedited processing up until the time of the first Office action, in accordance with all applicable laws, regulations, and policies. In particular, the application will be placed on the examiner's special docket prior to the first Office action, and will have special status up to issuance of the first Office action. Thereafter, the application will be placed on the examiner's regular amended docket, unless designated special in accordance with another established procedure (e.g., Accelerated Examination, Prioritized Examination, Special Based On Applicant's Age, etc.).

If applicant files an incomplete Form PTO/SB/436, or if an application accompanied by Form PTO/SB/436 does not comply with the requirements set forth in this notice, the USPTO will notify the applicant of the deficiency by issuing a notice, and applicant will be given only one opportunity to correct the deficiency, if correctable. If applicant still wishes to participate in the Glossary Pilot Program, applicant must make appropriate corrections within one month or thirty (30) days of the mailing date of the notice, whichever is longer. The time period for reply is *not* extendable under 37 CFR 1.136(a). If applicant fails to correct the deficiency indicated in the notice within the time period set forth therein, the application will not be eligible for the Glossary Pilot Program, and the application will be taken up for examination in accordance with standard examination procedures, unless designated special in accordance with another established procedure (e.g., Accelerated Examination, Prioritized Examination, Special Based On Applicant's Age, etc.). An originally-filed glossary providing explicit definitions on the record will control the interpretation of the relevant claim terms, whether or not the petition is granted.

D. *Interviews:* Standard interview practice and procedures applicable to regular *ex parte* prosecution will be available for applications participating in the Glossary Pilot Program. Applications accepted into the Glossary Pilot Program that also participate in the First Action Interview (FAI) Pilot Program must meet all the requirements and procedural limitations of the FAI Pilot Program.

E. *Examination:* During examination, in applications claiming benefit of an earlier application under 35 U.S.C. 119, claims that include terms defined in the glossary section will be examined to ensure they comply with the requirements of 35 U.S.C. 112(a) in order to determine their effective filing date in accordance with standard examining procedure. An applicant cannot subsequently disavow the meaning of any term that has already been defined in the glossary section submitted on filing. Except for the correction of typographical errors, the glossary definitions cannot be amended or deleted during examination. The examiner will consider the glossary section as controlling for the meaning of the terms defined in the glossary section.

Dated: March 24, 2014.

Michelle K. Lee,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2014–06792 Filed 3–26–14; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0092]

Submission for OMB Review; Comment Request—Clothing Textiles, Vinyl Plastic Film

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information from manufacturers and importers of clothing, textiles, and related materials intended for use in clothing under the Standard for the Flammability of Clothing Textiles (16 CFR part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by April 28, 2014.

ADDRESSES: Submit comments about this request by email: *OIRA_submission@omb.eop.gov* or fax: 202–395–6881. Comments by mail should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the CPSC, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. In addition, written comments that are sent to OMB also should be submitted electronically at *http://www.regulations.gov,* under Docket No. CPSC–2009–0092.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7923 or by email to *rsquibb@cpsc.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 14, 2013 (78 FR 35875), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the CPSC's intention to seek extension of approval of a collection of information from manufacturers and importers who furnish guaranties for products under 16 CFR parts 1610 and 1611.

A. Background

Clothing and fabrics intended for use in clothing (except children's sleepwear in sizes 0 through 14) are subject to the Standard for the Flammability of Clothing Textiles (16 CFR part 1610). Clothing made from vinyl plastic film and vinyl plastic film intended for use in clothing (except children's sleepwear in sizes 0 through 14) are subject to the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611). The standards set forth in 16 CFR parts 1610 and 1611 prescribe a test to help ensure that articles of wearing apparel, and fabrics and film intended for use in wearing apparel, are not dangerously flammable because of rapid and intense burning. Children's sleepwear and fabrics and related materials intended for use in children's sleepwear in sizes 0 through 14 are subject to other, more stringent flammability standards codified at 16 CFR parts 1615 and 1616. Pursuant to the Flammable Fabrics Act of 1953 (FFA) (Pub. L. 83–88, 67 Stat. 111; June 30, 1953), the testing procedures in 16 CFR parts 1610 and 1611 are mandatory for those firms that issue guaranties.

Section 8 of the FFA (15 U.S.C. 1197) provides that a person who receives a guaranty in good faith that a product complies with an applicable flammability standard is not subject to criminal prosecution for a violation of the FFA resulting from the sale of any product covered by the guaranty. For example, a distributor or importer may rely on a guaranty issued by another

firm stating that the fabric or wearing apparel covered by the guaranty is compliant with 16 CFR parts 1610 and 1611. The Commission uses the information compiled and maintained by firms that issue these guaranties to help protect the public from risks of injury or death associated with clothing and fabrics and vinyl film intended for use in clothing. In addition, the information helps the Commission pursue corrective actions if any products covered by a guaranty fail to comply with the applicable standard in a manner that creates a substantial risk of injury or death to the public.

Firms are not required to issue guaranties for fabrics or wearing apparel that they manufacture or distribute. Only domestic firms, or foreign entities with a domestic presence, can issue a guaranty. For those firms that choose to issue guaranties, section 8 of the FFA requires that such guaranties must be based on ''reasonable and representative tests.'' However, testing is not required to support a guaranty when the guaranty is based on an exemption contained in 16 CFR 1610.1(d). Continuing guaranties may be filed with the Commission. Any firm that issues a guaranty must keep records of the related tests. The testing and recordkeeping requirements for firms that issue guaranties are set forth under 16 CFR part 1610, subpart B, and 16 CFR part 1611, subpart B.

B. Comments

We received two comments, discussing four issues, in response to the June 14, 2013 notice.

Comment 1: One commenter stated that a study should be conducted to assess whether ''anti-inflammatory chemicals'' may increase the risk of cancer.

Response 1: This comment is outside the scope of the inquiry regarding paperwork burdens associated with issuing guaranties.

Comment 2: The American Apparel and Footwear Association (AAFA) asserts that under the FFA, continuing guaranties must be maintained for 3 years. However, AAFA notes that the proposed rulemaking for certificates of compliance under 16 CFR part 1110 would require certificates of compliance for non-children's apparel and supporting test records to be maintained for 5 years, as opposed to 3 years. AAFA opposes the addition of 2 years of record keeping requirements for such certificates.

Response 2: This information collection is on guaranties issued pursuant to 16 CFR parts 1610 and 1611. Accordingly, recordkeeping requirements for certificates of compliance are outside the scope of this information collection.

Comment 3: The AAFA questioned the accuracy of the Commission's estimate that 1,000 apparel manufacturers and importers issue guaranties. AAFA noted that in 2010, more than 7,000 U.S. companies were included in the general U.S. Census category of Apparel Manufacturing and about 6,000 in the category of Textile Mills. Additionally, the AAFA noted that in 2011, based on U.S. Customs and Border Protection estimates, there were about 68,000 apparel importers. Based on the figures provided in its comment, AAFA believes that the number of apparel and textile manufacturers that furnish guaranties is more than the Commission's estimate of 1,000. AAFA requested that the Commission describe in detail how the Commission came to the estimate of 1,000 manufacturers and importers that issue guaranties.

Response 3: For the purposes of this response, we do not question the accuracy of the figures provided by AAFA. However, staff believes that the figures provided by AAFA do not provide an accurate basis to estimate the number of manufacturers and importers that issue guaranties. Manufacturers and importers are not required to issue guaranties, and only domestic firms, or firms with a domestic presence may issue guaranties. Thus, even though tens of thousands of companies may be manufacturing or importing fabric or wearing apparel, based on guaranties filed with the Commission, compliance experience with the industry, and previous discussions with AAFA members, staff does not believe that most of these firms are issuing guaranties.

AAFA has not provided information that would aid in revising the Commission's estimate of the number of firms that issue guaranties. The Commission's estimate of 1,000 firms that issue guaranties was based on the number of guaranties that have been filed with the Commission. The Commission's most recent updated records indicate that approximately 660 firms have active continuing guaranties. Because guaranties are not required to be filed with the Commission, CPSC staff rounded the number of firms that issue guaranties up to 1,000.

Comment 4: The AAFA also questioned the Commission's estimate that the regulations impose an average annual burden of about 101.6 hours on each firm that issues guaranties. AAFA noted that the apparel industry is dynamic, with rapidly changing styles and products. AAFA stated that in 2011, there were about 11 million separate entries of imported apparel. AAFA argued that if each entry required one hour of recordkeeping, the total burden could be 11 million hours, much more than the Commission's estimate of 101,600 burden hours. AAFA requested that the Commission describe in detail how the average annual burden of 101.6 hours per firm was derived.

Response 4: The number of apparel entries does not provide an accurate basis for determining the recordkeeping burden for firms that issue guaranties because: (a) Importers are not required to issue or to file a guaranty with each import entry for fabric or wearing apparel; (b) imported fabric and apparel entries are not required to be accompanied by a guaranty; (c) even when fabric or apparel entries are covered by a guaranty, one guaranty can cover multiple products, fabrics, and entries; and (d) the number of apparel entries in a given year does not provide any information about what tests and records are required to be maintained which would inform an estimate of the recordkeeping burden. A direct relationship does not exist between the number of apparel entries in a given year and either the number of guaranties issued by firms or the burden hours associated with issuing a guaranty. Accordingly, the Commission has not relied upon the number of apparel entries to estimate the recordkeeping burden for guaranties.

The Commission's estimate of 101.6 average annual burden hours per firm for issuing guaranties is based on an estimate of the time for each firm that issues a guaranty to conduct the testing required by the regulations, to issue guaranties, and to establish and maintain associated records. In arriving at estimates of testing time, CPSC considered our own laboratory and Compliance experience and the experience of several AAFA- and ASTM-member manufacturers' and third party testing laboratories. The estimates used were purposely generous, and may overstate the actual time necessary to conduct testing. Additionally, the estimated testing time is an over-estimate because the testing time is applied to every firm per guaranty issued, even though many firms may issue guaranties based on an exemption from testing under 16 CFR 1610.1(d), and may not actually conduct testing. The Commission's average annual burden hour estimate of 101.6 is explained in detail in section C below.

C. Burden Hours

The Commission's estimate of 1,000 firms that issue guaranties is based on the number of continuing guaranties

that have been filed with the Commission. The Commission's last updated records indicate that approximately 660 firms have active continuing guaranties. Because continuing guaranties are not required to be filed with the Commission, CPSC staff rounded the number of firms up to 1,000.

The Commission estimates that the flammability standards for clothing textiles and vinyl plastic film and enforcement regulations impose an average annual burden of about 101.6 hours on each of those firms, based on an estimate of the time for each firm to conduct testing, issue guaranties, and to establish and maintain associated records. The average annual burden hour estimate of 101.6 is based on the following assumptions, which are based, among other things, on staff's experience with and expertise in testing requirements and procedures and staff's review of records relating to guaranties that have been filed with the Commission:

- Testing Time—5 hours per test series, using either the test and conditioning procedures in the regulations or alternate methods that are now allowed under the 2007 amendments to the regulations (this was applied to all firms for each guaranty, even though many firms no longer test because the products are exempt by virtue of weight or fiber content under 16 CFR 1610.1(d), or because the firms' experience indicates that the fabrics already comply);
- Guaranties Issued—*On average,* 20 new guaranties issued per firm per year for new fabrics or garments;
- Estimated Annual Testing Time per Firm—5 hours for testing × 20 guaranties issued = 100 hours per firm;
- Estimated Annual Recordkeeping per Firm—1 hour to create, record, and enter test data into a computerized dataset; 20 minutes (= 0.3 hours) for annual review/removal of records; 20 minutes (= 0.3 hours) to respond to one CPSC records request per year; for a total of 1.6 recordkeeping hours per firm (1 hour + .3 hours + .3 hours = 1.6 hours per firm);
- Total Estimated Annual Burden Hours per Firm—100 hours Estimated Annual Testing Time per Firm + 1.6 Estimated Annual Recordkeeping hours per Firm = 101.6 hours per firm;
- Estimated Annual Industry Burden—101.6 hours per firm × 1,000 firms issuing guaranties = 101,600 industry burden hours.

The total annual industry burden imposed by the flammability standards for clothing textiles and vinyl plastic film and enforcement regulations on manufacturers and importers of garments, fabrics, and related materials is estimated to be about 101,600 hours (101.6 hours per firm × 1,000 firms).

The hourly wage for the testing and recordkeeping required by the standards is about $61.06 (for management, professional, and related occupations in goods-producing industries, Bureau of Labor Statistics, December 2012), for an estimated annual cost to the industry of approximately $6.2 million (101,600 × $61.06 = $6,203,696.00). The hourly wage was updated from the $57.22 estimate used in the June 14, 2013 notice (for management, professional, and related occupations in goods-producing industries, Bureau of Labor Statistics, June 2009).

The estimated annual cost of the information collection requirements to the federal government is approximately $4,696, which is based on a total 80 staff hours to examine and evaluate the information as needed for Compliance activities (representing an estimate of the actual time required to conduct such examination and evaluation in staff's experience). Compliance staff typically reviews a subset of the guaranties filed and may inspect firms that issue guaranties. The estimated annual cost to the government is based on a GS–12 level salaried employee. The average hourly wage rate for a mid-level salaried GS–12 employee in the Washington, DC metropolitan area (effective as of January 2011) is $40.80 (GS–12, step 5). This represents 69.5 percent of total compensation (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' December 2012, Table 1, percentage of wages and salaries for all civilian management, professional, and related employees: *http://www.bls.gov/ncs/*). Adding an additional 30.5 percent for benefits brings average hourly compensation for a mid-level salaried GS–12 employee to $58.70 ($58.70 hourly compensation × 80 hours = $4,696.00).

Dated: March 24, 2014.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–06772 Filed 3–26–14; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–HA–0005]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 28, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Women, Infants and Children Overseas Participant Satisfaction Survey; OMB Control Number 0720–0046.

Type of Request: Extension.

Number of Respondents: 75.

Responses per Respondent: 2.

Annual Responses: 150.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 38.

Needs and Uses: The information collection requirement is necessary to obtain the participant's satisfaction levels with the services provided by the WIC overseas staff and the overall program. The findings from the surveys will be used to determine the success of the WIC overseas program and if improvements are necessary.

Affected Public: Individual or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. John Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800

Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: March 24, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–06770 Filed 3–26–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Assistant Secretary of Defense, DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (subsequently referred to as the Task Force).

DATES: Wednesday, April 16, 2014 from 8:00 a.m. to 5:30 p.m. EST–Thursday, April 17, 2014 from 8:30 a.m. to 3:15 p.m. EST.

ADDRESSES: DoubleTree by Hilton Hotel Washington DC-Crystal City, 300 Army Navy Drive, Arlington, VA 22202 (Washington Ball Room).

FOR FURTHER INFORMATION CONTACT: Mail Delivery service through Recovering Warrior Task Force, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–0021 ''Mark as Time Sensitive for April Meeting.'' Email correspondence to *rwtf@mail.mil*. Denise F. Dailey, Designated Federal Officer; Telephone (703) 325–6640. Fax (703) 325–6710.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is for the Task Force Members to convene and gather data from panels and briefers on the Task Force's topics of inquiry.

Agenda: (Refer to *http://rwtf.defense.gov* for the most up-to-date meeting information.)

Day One: Wednesday, April 16, 2014

8:00 a.m.–8:15 a.m. New Member and Returning Member Swearing-In
8:15 a.m.–8:30 a.m. Ethics Review, Standards of Conduct Office
8:30 a.m.–8:45 a.m. Welcome, Member Introductions
8:45 a.m.–9:30 a.m. Installation Visit After Action Review
9:30 a.m.–10:30 a.m. Army Warrior Transition Command Response to RWTF FY13 Recommendations
10:30 a.m.–10:45 a.m. Break
10:45 a.m.–11:30 a.m. Army Warrior Transition Command Survey Program
11:30 a.m.–12:15 p.m. Army WTC Survey Program
12:15 p.m.–1:15 p.m. Break for Lunch
1:15 p.m.–2:15 p.m. Office of Warrior Care Policy
2:15 p.m.–3:00 p.m. Office of the Assistant Secretary of Defense (Reserve Affairs)
3:00 p.m.–3:15 p.m. Break
3:15 p.m.–4:15 p.m. Interagency Care Coordination Committee (IC3) Update
4:15 p.m.–5:15 p.m. RWTF Review of Way Forward
5:15 p.m.–5:30 p.m. Wrap Up

Day Two: Thursday, April 17, 2014

8:30 a.m.–9:00 a.m. Welcome, Annual Ethics Training for Task Force Members
9:00 a.m.–9:15 a.m. Public Forum
9:15 a.m.–10:15 a.m. Navy Response to RWTF FY13 Recommendations
10:15 a.m.–11:00 a.m. Safe Harbor Enrollee and Caregiver Surveys
11:00 a.m.–11:15 a.m. Break
11:15 a.m.–12:15 p.m. Air Force Wounded Warrior & Survivor Care Response to RWTF FY13 Recommendations
12:15 p.m.–1:15 p.m. Break for Lunch
1:15 p.m.–2:15 p.m. Marine Corps Wounded Warrior Regiment Response to RWTF FY13 Recommendations
2:15 p.m.–3:00 p.m. Marine Corps WWR Survey Program
3:00 p.m.–3:15 p.m. Wrap Up

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces about its mission and functions. If individuals are interested in making an oral statement during the Public Forum, a written statement for a presentation of two minutes must be submitted as stated in this notice and it must be identified as being submitted for an oral presentation by the person making the submission. Identification information must be provided and, at a minimum, must include a name and a phone number. Individuals may visit the Task Force Web site at *http://rwtf.defense.gov* to view the Charter. Individuals making presentations will be notified by Friday, April 11, 2014. Oral presentations will be permitted only on Thursday, April 17, 2014 from 9:00 a.m. to 9:15 a.m. EST before the Task Force. The number of oral presentations will not exceed ten, with one minute of questions available to the Task Force members per presenter. Presenters should not exceed their two minutes.

Written statements in which the author does not wish to present orally may be submitted at any time or in response to the stated agenda of a planned meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces.

All written statements shall be submitted to the Designated Federal Officer for the Task Force through the contact information in the **FOR FURTHER INFORMATION CONTACT** section, and this individual will ensure that the written statements are provided to the membership for their consideration. Statements, either oral or written, being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 5:00 p.m. EST, Wednesday, April 9, 2014 with the subject of this notice. Statements received after this date may not be provided to or considered by the Task Force until its next meeting. Please mark mail correspondence as ''Time Sensitive for April Meeting.''

The Designated Federal Officer will review all timely submissions with the Task Force Co-Chairs and ensure they are provided to all members of the Task Force before the meeting that is the subject of this notice.

Reasonable accommodations will be made for those individuals with disabilities who request them. Requests for additional services should be directed to Ms. Heather Moore, (703)

325–6640, by 5:00 p.m. EST, Monday, April 14, 2014.

Dated: March 24, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–06779 Filed 3–26–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Agency Emergency Information Collection Reinstatement

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request (OMB Control Number 1910–1700) with the Office of Management and Budget (OMB). The proposed voluntary collection will request that an individual or an authorized designee provide pertinent information for easy record retrieval allowing for increased efficiencies and quicker processing. Pertinent information includes the requester's name, shipping address, phone number, email address, previous work location, the action requested, and any identifying data that will help locate the records (e.g., maiden name, occupational license number, time and place of employment).

DATES: Comments regarding this collection must be received on or before April 28, 2014. 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The OMB Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to:

OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 735 17th Street NW., Room 10102, Washington, DC 20503

and to

Director, Records Management Division, Office of the Chief Information Officer, U.S. Department of Energy, 19901 Germantown Rd., Room G–312, Germantown, MD 20874, *informationcollection@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Christina Rouleau, Paperwork Reduction Act Officer, Office of the Chief Information Officer, U.S. Department of Energy, 19901 Germantown Rd., Room G–312, Germantown, MD 20874, (301) 903–6227, *informationcollection@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: *This information collection request contains:* (1) OMB No. 1910–1700; (2) *Information Collection Request Title:* Records and Administration; (3) *Type of Request:* Regular; (4) *Purpose:* The Privacy Act Information Request Form assists the Department of Energy in processing privacy requests submitted by an individual or an authorized designee wherein he or she is requesting records the government may maintain on them. This form will increase efficiencies, including, but not limited to, providing for quicker processing of privacy requests by asking of the individuals or their designees the pertinent information for easy record retrieval; (5) *Annual Estimated Number of Respondents:* 135; (6) *Annual Estimated Number of Total Responses:* 135; (7) *Annual Estimated Number of Burden Hours:* 45 hrs.; and, (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* N/A.

Statutory Authority: The Privacy Act of 1974; 5 U.S.C. 552(a); 10 CFR 1008.7; and, DOE Order 206.1.

Issued in Washington, DC.

Troy Manigault,

Departmental Records Officer, Office of the Chief Information Officer.

[FR Doc. 2014–06781 Filed 3–26–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–356–A]

Application To Export Electric Energy; J.P. Morgan Commodities Canada Corporation

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: J.P. Morgan Commodities Canada Corporation (JPMCCC) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 28, 2014.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Lamont.Jackson@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Lamont Jackson (Program Office) at 202–586–0808, or by email to *Lamont.Jackson@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. §§ 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C.§ 824a(e)).

On July 20, 2009, DOE issued Order No. EA–356 to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on July 20, 2014. On March 13, 2014, JPMCCC filed an application with DOE for renewal of the export authority contained in Order No. EA–356 for an additional five-year term.

JPMCCC states that it has no ''supply system'' of its own on which exports of power could have a reliability or stability impact. All of the electricity exported will be transmitted pursuant to arrangements with utilities that own or operate existing transmission facilities and will be consisted with the terms and conditions contained in the existing Presidential Permits and export authorizations associated with those facilities. The electric energy that JPMCCC proposes to export to Canada would be surplus energy purchased from electric utilities and other suppliers within the United States. The existing international transmission facilities to be utilized by JPMCCC have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings

should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the JPMCCC application to export electric energy to Canada should be clearly marked with OE Docket No. EA–356–A. An additional copy is to be provided directly to both Frank Karabetsos, Vice President—Assistant General Counsel and Greg S. Johnston, Executive Director—Assistant General Counsel, J.P. Morgan Commodities Canada Corp., Suite 600 Vintage Towers II, 326—11th Ave. SW., Calgary, AB, Canada T2R 0C5. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov*.

Issued in Washington, DC, on March 21, 2014.

Brian Mills,

Director, Permitting and Siting Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2014–06788 Filed 3–26–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–627–000.
Applicants: North Baja Pipeline, LLC.
Description: GT&C Service Agmts Provision Changes to be effective 4/21/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5019.
Comments Due: 5 p.m. ET 3/31/14.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP14–502–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Amendment to Filing in Docket No. RP14–502 to be effective 2/20/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5021.
Comments Due: 5 p.m. ET 3/31/14.

Docket Numbers: RP14–502–002.
Applicants: Gulf South Pipeline Company, LP.
Description: Second Amendment to Filing in Docket No. RP14–502 to be effective 2/20/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5027.
Comments Due: 5 p.m. ET 3/31/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated March 19, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–06747 Filed 3–26–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0093; FRL–9908–85–OAR]

Proposed Information Collection Request; Comment Request; Reporting and Recordkeeping Requirements for Clean Air Act Tribal Authority (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Reporting and Recordkeeping Requirements for Clean Air Act Tribal Authority'' (EPA ICR No. 1676.05, OMB Control No. 2060–0306) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2014. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before May 27, 2014.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0093 online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Pat Childers, Office of Air and Radiation, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–1082; fax number: 202–564–0394 email address: *childers.pat@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including

whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This Information Collection Request (ICR) seeks authorization for tribes to demonstrate their eligibility to be treated in the same manner as states under the Clean Air Act (CAA) and to submit applications to implement a CAA program. This ICR extends the collection period of information for determining eligibility, which expires August 31, 2014. The ICR maintains the estimates of burden costs for tribes in completing a CAA application.

The program regulation provides for Indian tribes, if they so choose, to assume responsibility for the development and implementation of CAA programs. The regulation, Indian Tribes: Air Quality Planning and Management (Tribal Authority Rule [TAR] 40 CFR parts 9, 35, 49, 50 and 81) sets forth how tribes may seek authority to implement their own air quality planning and management programs. The rule establishes: (1) Which CAA provisions Indian tribes may seek authority to implement, (2) what requirements the tribes must meet when seeking such authorization, and (3) what Federal financial assistance may be available to help tribes establish and manage their air quality programs. The TAR provides tribes the authority to administer air quality programs over all air resources, including non-Indian owned fee lands, within the exterior boundaries of a reservation and other areas over which the tribe can demonstrate jurisdiction. An Indian tribe that takes responsibility for a CAA program would essentially be treated in the same way as a state would be treated for that program.

Respondents/affected entities: States, locals, Indian tribes.

Respondent's obligation to respond: Voluntary, required to obtain or retain a benefit (Tribal Authority Rule [TAR] 40 CFR parts 9, 35, 49, 50 and 81).

Estimated number of respondents: 8.

Frequency of response: One time applications.

Total estimated burden: 320 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $18,896.00 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is no change of hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: March 20, 2014.

Pat Childers,

Tribal Program Coordinator, Office of Air and Radiation.

[FR Doc. 2014–06867 Filed 3–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2014–0231; FR:–9908–78–ORD]

Draft Revised EPA's Report on the Environment 2014

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 30-day public comment period for the draft revised web-based, ''EPA's Report on the Environment 2014'' (ROE 2014). The ROE is a comprehensive source of scientific indicators that describe the trends in the nation's environmental and human health condition. ROE 2014 was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development, working in collaboration with EPA Program and Regional offices.

The public comment period provides opportunities for all interested parties to comment on the draft ROE 2014. The draft ROE will also be reviewed by the agency's independent Science Advisory Board (SAB) at a later date which will be announced in the **Federal Register**. When finalizing the draft ROE 2014, EPA intends to consider any public comments that EPA receives in accordance with this notice and intends to forward these comments to the SAB panel prior to their review.

EPA is releasing the draft ROE 2014 for the purposes of public comment and peer review. This draft is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views.

The draft ROE 2014 Web site can be accessed at the following url: *www.epa.gov/draftroe.*

DATES: The 30 day public comment period begins March 27, 2014, and ends April 28, 2014. Technical comments should be in writing and must be received by EPA by April 28, 2014.

ADDRESSES: The draft ''EPA's Report on the Environment 2014'' is web-based and is available solely via the Internet using this URL: *www.epa.gov/draftroe.*

Comments may be submitted electronically via *www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information, contact Dr. Patricia Murphy, NCEA; telephone: 732–906–6830, facsimile: 732–906–6896 or email: *murphy.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

EPA's draft ROE 2014 is a comprehensive source of scientific indicators that describe the trends in the nation's environmental and human health condition. The indicators help to answer important questions for EPA about the current status and historical trends in U.S. air, water, land, human health, ecological systems, and aspects of sustainability at the national and regional levels. These indicators are based on data collected by the EPA, other federal and state agencies, and non-governmental organizations and meet high standards for data quality, objectivity, and utility. The ROE reports status and trends; it does not analyze or diagnose the reasons for, and relationships between, trends in stressors and environmental and health outcomes.

Since its earliest release in 2003, the ROE has undergone periodic updates and restructurings. The latest version features several significant changes, the most notable being that the draft ROE 2014 is fully online, allowing it to be more interactive and accessible than ever. Users can customize graphics and pan and zoom on maps. For certain

indicators, users can now choose to view statistical information about the data by simply clicking display options. Additionally, new indicators fill information gaps which previously lacked reliable, long-term data. A new conceptual framework and sustainability theme have also been added.

II. How To Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2014–0231, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The phone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2014–0231. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center home page at *www.epa.gov/epahome/dockets.htm.*

Docket: 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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: March 19, 2014.

John Vandenberg,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2014–06824 Filed 3–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0011; FRL–9907–93]

Notice of Receipt of Pesticide Products; Registration Applications To Register New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This notice provides the public with an opportunity to comment on the applications.

DATES: Comments must be received on or before April 28, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EPA Registration Number or EPA File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Antimicrobials Division (AD) (7510P), email address: *ADFRNotices@epa.gov;* or Lois Rossi, Registration Division (RD) (7505P), email address: *RDFRNotices@epa.gov;* main telephone number: (703) 305–7090, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather

provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under the Agency's public participation process for registration actions, there will be an additional opportunity for a 30–day public comment period on the proposed decision. Please see the Agency's public participation Web site for additional information on this process (*http://www.epa.gov/pesticides/regulating/registration-public-involvement.html). EPA received the following applications to register* new uses for pesticide products containing currently registered active ingredients:

1. *EPA Registration Numbers/EPA File Symbol:* 264–1078, 264–1084, 264–1085, 264–1090, 264–1091, and 264–RRAT. *Docket ID number:* EPA–HQ–OPP–2013–0662. *Applicant:* Bayer CropScience LLC, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Fluopyram. *Product type:* Fungicide. *Proposed uses:* Soybean, seed; cotton, seed; cotton, gin byproducts; peanut; grains, cereal, except rice, Group 15; grains, cereal, forage, Group 16; and grain, cereal, fodder, hay, and straw, Group 16. (RD)
2. *EPA Registration Number/EPA File Symbol:* 264–1049 and 432–RLGN. *Docket ID number:* EPA–HQ–OPP–2014–0100. *Applicant:* Bayer CropScience LLC, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Spirotetramat. *Product type:* Insecticide. *Proposed uses:* Lawn and turfgrass, including sod farms. (RD)
3. *EPA File Symbol:* 432–RLGU. *Docket ID number:* EPA–HQ–OPP–2014–0208. *Applicant:* Bayer CropScience LLC, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Deltamethrin. *Product type:* Insecticide. *Proposed use:* Wide area mosquito adulticide. (RD)
4. *EPA Registration Numbers:* 7969–275 and 7969–0276. *Docket ID number:* EPA–HQ–OPP–2014–0124. *Applicant:* BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park, NC 27709–3528. *Active ingredient:* Saflufenacil. *Product type:* Herbicide. *Proposed uses:* Broadleaf weed control around olive trees. (RD)
5. *EPA Registration Number:* 10163–6414. *Docket ID number:* EPA–HQ–OPP–2013–0644. *Applicant:* Gowan, P.O. Box 5569, Yuma, AZ 85366–5569. *Active ingredient:* Zoxamide. *Product type:* Fungicide. *Proposed uses:* Onion, bulb, subgroup 3–07. (RD)
6. *EPA Registration Numbers:* 59639–139 and 59639–140. *Docket ID number:* EPA–HQ–OPP–2014–0116. *Applicant:* Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596. *Active ingredient:* Fluopicolide. *Product type:* Fungicide. *Proposed use:* Tobacco. (RD)
7. *EPA Registration Numbers:* 62719–266, 62719–497, and 62719–621. *Docket ID number:* EPA–HQ–OPP–2013–0727. *Applicant:* Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Spinosad. *Product type:* Insecticide. *Proposed use:* Coffee, berry subgroups 13–07F and G, green onion subgroup 3–07B, and cottonseed subgroup 20C. (RD)
8. *EPA Registration Numbers:* 62719–539, 62719–541, and 62719–545. *Docket ID number:* EPA–HQ–OPP–2013–0730. *Applicant:* Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Spinetoram. *Product type:* Insecticide. *Proposed use:* Coffee, berry subgroups 13–07F and G; green onion, subgroup 3–07B; and cottonseed, subgroup 20C. (RD)
9. *EPA Registration Number:* 65217–1. *Docket ID Number:* EPA–HQ–OPP–2014–0146. *Applicant:* Hammonds Fuel Additives, Inc., c/o Delta Analytical Corp., 12510 Prosperity Drive, Suite 160, Silver Spring, MD 20904. *Active ingredient:* 2,2'-(1-methyltrimethylenedioxy)bis(4-methyl-1,3,2-dioxaborinane). *Product type:* Microbicide/microbistat. *Proposed uses:* New use intended to control microbial growth in all hydraulic fluids, lubricants, transmission fluids, and anti-freeze. (AD)
10. *EPA Registration Symbols:* 71512–EL and 71512–EU. *Docket ID number:* EPA–HQ–OPP–2014–0153. *Applicant:* ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Pyriofenone. *Product type:* Fungicide. *Proposed uses:* For use on Cucurbit, Crop Group 9; and berry and small fruit, Crop Group 13–07, except large shrub/tree berry, crop subgroup 13–07C. (RD)

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 13, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2014–06816 Filed 3–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9908–84–OA]

Request for Nominations for the Clean Air Scientific Advisory Committee (CASAC) Review Panel for Oxides of Nitrogen and Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office is seeking nominations of nationally recognized experts for consideration for membership on a new Clean Air Scientific Advisory Committee (CASAC) Review Panel on scientific assessments to support EPA's decisions on secondary (welfare-based) air quality standards for oxides of nitrogen (NO_X) and oxides of sulfur (SO_X).

DATES: New nominations should be submitted by April 17, 2014.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voice mail: (202) 564–2073 or email at *stallworth.holly@epa.gov.* General information concerning the CASAC can be found on the EPA Web site at: *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and NAAQS and recommend any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC shall also provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and of adverse effects which may result from various strategies to attain and maintain air quality standards. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including NO_X and SO_X. EPA is currently preparing to review the secondary (welfare-based) air quality criteria for NO_X and SO_X.

The SAB Staff Office is establishing a panel of experts to augment the chartered CASAC to provide EPA advice on its scientific assessments on this topic. The CASAC and the CASAC NO_X and SO_X Secondary Review Panel will comply with the provisions of FACA and all appropriate EPA and SAB Staff Office procedural policies.

This **Federal Register** notice seeks nominations of nationally-recognized experts regarding NO_X and SO_X in one or more of the following disciplines. (a) *Ecological Effects.* Expertise in evaluation of the effects of exposure to gas-phase oxides of nitrogen and sulfur, nitrogen deposition and acidification caused by deposition of nitrogen and sulfur, on agricultural crops and natural ecosystems and their components, both flora and fauna, ranging from biochemical/sub-cellular effects on organisms to increasingly more complex levels of ecosystem organization and biodiversity. Appropriate expertise disciplines include: aquatic chemistry; aquatic ecology/biology; limnology; terrestrial ecology; forest ecology; grassland ecology; rangeland ecology; terrestrial/aquatic biogeochemistry; marine and estuarine ecology; landscape ecology; terrestrial/aquatic nutrient cycling; and terrestrial/aquatic wildlife biology and soil chemistry. (b) *Other Welfare Effects.* Expertise in the evaluation of the effects of oxides of nitrogen and sulfur and acid deposition on public welfare including damage to materials, and the interactions of these pollutants to affect global climate conditions. (c) *Ecosystem Exposure and Risk Assessment/Modeling.* Expertise in terrestrial and aquatic or biogeochemical modeling across a range of scales from local watershed to landscape to continental, static and dynamic ecosystem response models, integrated assessment models, identification of bio-indicators useful for tracking ecosystem change, methods and approaches available to estimate total loadings of sulfur and nitrogen species to ecosystems, and the current state of critical loads science and application. Expertise in modeling sensitivity of ecosystems to climate change as it relates to effects from nitrogen and sulfur oxides exposure. (d) *Ecosystem services and resource valuation.* Expertise in connecting ecological effects to incremental changes in provision of various final ecosystem services, both aquatic and terrestrial and subsequent incremental changes in the value of those services monetary or nonmonetary. (e) *Atmospheric Science.* Expertise in physical and chemical properties of oxides of nitrogen, reduced and organic forms of nitrogen, and oxides of sulfur; atmospheric processes involved in their formation and transport on urban to global scales; transformation of these pollutants in the atmosphere; and movement of the pollutants between media through deposition and other such mechanisms. Also, expertise in the evaluation of natural and anthropogenic sources and emissions of oxides of nitrogen and sulfur; pertinent monitoring or measurement methods for the atmospheric concentration and deposition of these pollutants; and spatial and temporal trends in their atmospheric concentrations and deposition.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals for consideration of membership on the CASAC Oxides of Nitrogen and Sulfur Secondary Review Panel in the areas of expertise described above. Nominations should be submitted in electronic format through the EPA Web site: *http://yosemite.epa.gov/sab/sabproduct.nsf/Web/participatepanelformation?OpenDocument.* To receive full consideration, nominations should include all of the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume or curriculum vitae; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Stallworth as noted above. Nominations should be submitted in time to arrive no later than April 17, 2014. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff will be posted in a List of Candidates for the NO_X and SO_X Secondary Review Panel on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstractivites/NOx%20SOx%20Secondary%20NAAQS%20Review?OpenDocument.* Public comments on the List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the

SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming this expert panel, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the panel as a whole, diversity of expertise and scientific points of view.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which include membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a loss of impartiality, as defined by federal regulation. The form may be viewed and downloaded from the following Web address *http://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument.* The EPA provides information about ethics for advisory members at the following Web address: *http://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: March 18, 2014.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2014–06830 Filed 3–26–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 27, 2014. 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 FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Leslie F. Smith at (202) 418–0217, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1081.

Title: Telecommunications Carriers Eligible to Receive Universal Service Support.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 20 respondents; 20 responses.

Estimated Time per Response: 40 hours.

Obligation to Respond: Required to obtain or retain benefits, 47 CFR 54.202, 54.209.

Frequency of Response: Annually.

Total Annual Burden: 800 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature of Extent of Confidentiality: If respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: Designation as an Eligible Telecommunications Carrier (ETC) makes a telecommunications carrier eligible to participate in the Universal Service Fund's high-cost and low-income programs, which support the extension of telecommunications services to underserved rural and low-income communities. In the absence of this information collection, the Commission's ability to oversee the use of Federal universal service funds and to combat waste, fraud, and abuse in the use of Federal funds would be compromised. Section 54.202 of the Commission's rules requires carriers seeking designation from the Commission to submit an application that certifies that the carrier will comply with the service requirement applicable to the support that it receives, 47 CFR 54.202(a)(1)(i), applicants must submit a five year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area, with estimates of the area and population that will be served as a result of the improvements, § 54.202(a)(1)(ii), an applicant must

demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations, § 54.202(a)(2), demonstrate that it will satisfy applicable consumer protection and service quality standards, § 54.202(a)(3), A common carrier seeking designation as an ETC for purposes of receiving support only under subpart E of Part 54 of the Commission's rules (Universal Service Support for Low-Income Consumers) must demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E, § 54.202(a)(4), applicants must submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan, § 54.202(a)(5). If the common carrier is seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of Tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send any public notice seeking comment on any petition for designation as an eligible telecommunications carrier on Tribal lands, at the time it is released, the affected tribal government and tribal regulatory authority, as applicable, by the most expeditious means available, § 54.202(c).

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–06773 Filed 3–26–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB Control Number.

DATES: Written PRA comments should be submitted on or before April 28, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov*. To submit your PRA comments by email, send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), at 202–418–0217, or via the Internet at: *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0823.

Title: Part 64, Pay Telephone Reclassification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 400 respondents; 16,820 responses.

Estimated Time per Response: 2.66 hours (average).

Frequency of Response: On occasion, quarterly and monthly reporting requirements and third party disclosure requirements.

Obligation To Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 201–205, 218, 226 and 276.

Total Annual Burden: 44,700 hours.

Total Annual Cost: $652,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Confidentiality concerns are not relevant to these types of disclosures. The Commission is not requesting carriers or providers to submit confidential information to the Commission. If the Commission requests that carriers or providers submit information which they believe is confidential, the carriers or providers may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission established a plan to ensure that payphone service providers (PSPs) were compensated for certain non-coin calls originated from their payphones. As part of this plan, the Commission required that by October 7, 1997, local exchange carriers were to provide payphone-specific coding digits to PSPs, and that PSPs were to provide those digits from their payphones to interexchange carriers. The provision of payphone-specific coding digits was a prerequisite to payphone per-call compensation payments by IXCs to PSPs for subscriber 800 and access code calls. The Commission's Wireline Competition Bureau subsequently provided a waiver until March 9, 1998, for those payphones for which the necessary coding digits were not provided to identify calls. The Bureau also on that date clarified the requirements established in the Payphone Orders for the provision of payphone-specific coding digits and for tariffs that LECs must file pursuant to the Payphone Orders.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–06716 Filed 3–26–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 27, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0805.

Title: 700 MHz Eligibility, Regional Planning Requirements, and 4.9 GHz Guidelines (47 CFR 90.523, 90.527, and 90.1211).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal government; not-for-profit institutions.

Number of Respondents and Responses: 1,172 respondents; 1,172 responses.

Estimated Time Per Response: 1 hour (range of 1 hour to 628 hours).

Frequency of Response: On occasion reporting requirements; one-time reporting requirements; and third party disclosure requirements.

Obligation To Respond: Required to obtain or retain benefits (47 CFR 90.523, 90.527, and voluntary (47 CFR 90.1211).

Total Annual Burden: 35,756 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Section 90.523 requires that non-governmental organizations that provide services which protect the safety of life or property obtain a written statement from an authorizing state or local government entity to support the nongovernmental organization's application for assignment of 700 MHz frequencies. Section 90.527 requires 700 MHz regional planning regions to submit an initial plan for use of the 700 MHz general use spectrum in the consolidated narrowband segment 769–775 MHz and 799–805 MHz. Regional planning committees may modify plans by written request, which must contain the full text of the modification and certification that the modification was successfully coordinated with adjacent regions. Regional planning promotes a fair and open process in developing allocation assignments by requiring input from eligible entities in the allocation decisions and the application technical review/approval process. Entities that seek inclusion in the plan to obtain future licenses are considered third party respondents. Section 90.1211 authorizes the fifty-five 700 MHz regional planning committees to develop and submit on a voluntary basis a plan on guidelines for coordination procedures to facilitate the shared use of 4940–4990 MHz (4.9 GHz) band, the Commission has stayed this requirement indefinitely. Applicants are granted a geographic area license for the entire fifty MHz of 4.9 GHz spectrum over a geographical area defined by the boundaries of their jurisdiction—city, county or state. Accordingly, licensees are required to coordinate their operations in the shared band to avoid interference, a common practice when joint operations are conducted.

Commission staff will use the information to assign licenses, determine regional spectrum requirements and to develop technical standards. The information will also be used to determine whether prospective licensees operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the efficient use of the available frequencies. This information collection includes rules to govern the operation and licensing of the 700 MHz and 4.9 GHz bands rules and regulation to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information will continue to be used to verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–06717 Filed 3–26–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 14–369]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date, time, and agenda of its Consumer Advisory Committee (hereinafter the ''Committee''). The purpose of the Committee is to make recommendations to the Commission regarding matters within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: Friday, March 28, 2014.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (voice or Relay), or email *Scott.Marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 14–369, released March

20, 2014 announcing the agenda, date, and time of the Committee's next meeting (commencing at 9:00 a.m. and adjourning at 4:00 p.m.) to be held in the Commission Meeting Room TW–C305.

At its March 28, 2014 meeting, the Committee is expected to consider recommendations concerning E-rate, the IP Transition, wireless mobile health devices, and caption quality. The Committee may also consider other recommendations from its working groups, and may also receive briefings from FCC staff and outside speakers on matters of interest to the Committee. A limited amount of time will be available on the agenda for comments from the public. The public may ask questions of presenters via email *livequestions@fcc.gov* or via Twitter using the hashtag *#fcclive*. In addition, the public may also follow the meeting on Twitter *@fcc* or via the Commission's Facebook page at *www.facebook.com/fcc*. Alternatively, members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee at the address provided above.

The meeting is open to the public, and the site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site. Meetings are also broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live/*. Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may not be possible to fill. To request an accommodation, send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Kris Anne Monteith,

Acting Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2014–06853 Filed 3–26–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request (3064–0092, –0099, –0118, & –0149)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). On January 16, 2014, (79 FR 2836), the FDIC requested comment for 60 days on a proposal to renew the following information collections: Community Reinvestment Act, 3064–0092; Application for Waiver of Prohibition on Acceptance of Brokered Deposits, 3064–0099; Management Official Interlocks, 3064–0118; & Affordable Marketing/Consumer Opt-Out Notices, 3064–0149, described below. Except as noted below, no comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on this renewal.

DATES: Comments must be submitted on or before April 28, 2014.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently-Approved Collections of Information

1. Title: Community Reinvestment Act.

OMB Number: 3064–0092.

Form Number: FDIC.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks and state savings associations.

Estimated Reporting Burden—The reporting requirements involve approximately 257 large banks: 257 respondents; 82,223 reporting burden hours.

Estimated Recordkeeping Burden—The recordkeeping requirements involve approximately 257 large banks: 257 record keepers; 83,233 recordkeeping burden hours.

Estimated Disclosure Burden—The public file and public notice disclosure requirements involve 4524 small banks and 257 large banks: 4781 respondents @ 10 hours = 47,810 total disclosure burden hours.

Total CRA Burden—The FDIC estimates the combined estimated total annual reporting, recordkeeping, and disclosure burden at 213,266 hours.

General Description of Collection: The Community Reinvestment Act regulation requires the FDIC to assess the record of banks and thrifts in helping meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations; and to take this record into account in evaluating applications for mergers, branches, and certain other corporate activities.

Comment: A commenter applauded FDIC on its efforts to assess how the credit needs of communities were being served, but urged FDIC to go further and make racial lending performance a factor in CRA examinations.

2. Title: Application for Waiver of Prohibition on Acceptance of Brokered Deposits.

OMB Number: 3064–0099.

Form Number: None.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks and state savings associations.

Estimated Number of Applications: 85.

Estimated Time per Application: 6 hours.

Total Annual Burden: 510 hours.

General Description of Collection: Section 29 of the Federal Deposit Insurance Act prohibits undercapitalized insured depository institutions from accepting, renewing,

or rolling over any brokered deposits. Adequately capitalized institutions may do so with a waiver from the FDIC, while well-capitalized institutions may accept, renew, or roll over brokered deposits without restriction.

3. *Title:* Management Official Interlocks.

OMB Number: 3064–0118.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Estimated Number of Respondents: 10.

Frequency of Response: On occasion.

Estimated Annual Burden Hours per Response: 4 hours.

Total estimated annual burden: 40 hours.

General Description of Collection: The FDIC's Management Official Interlocks regulation, 12 CFR 348, which implements the Depository Institutions Management Interlocks Act (DIMIA), 12 U.S.C. 3201–3208, generally prohibits bank management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies but allows the FDIC to grant exemptions in appropriate circumstances. Consistent with DIMIA, the FDIC's Management Official Interlocks regulation has application requirement requiring information specified in the FDIC's procedural regulation. The rule also contains a notification requirement.

4. *Title:* Affordable Marketing/Consumer Opt-Out Notices.

OMB Number: 3064–0149.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Estimated Burden on Institutions: 978 × 18 hours = 17,604 hours.

Estimated Burden on Consumers: Total number of consumers who opt out = 198,450. Estimated time per consumer opt-out = 5 minutes. 198,450 × 5/60 hours = 16,537.5 hours.

Total Estimated Burden: 17,604 hours + 16,537.5 hours = 34,141.5 hours.

General Description of Collection: The Section 214 of the FACT Act requires financial institutions to disclose to consumers the opportunity to opt out of marketing solicitations from affiliates. The disclosures and responsive consumer opt-out notices comprise the elements of this collection of information.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the 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 the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 24th day of March, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–06782 Filed 3–26–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, April 1, 2014 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley Garr,

Deputy Secretary of the Commission.

[FR Doc. 2014–06987 Filed 3–25–14; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at 202/523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012253.

Title: NMCC/Hoegh Space Charter Agreement.

Parties: Hoegh Autoliners AS and Nissan Motor Car Carrier Co., Ltd. and World Logistics Service (U.S.A.), Inc.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004.

Synopsis: The agreement authorizes the parties to charter space on each other's vessels in the trade between the U.S. East Coast and countries bordering on the Mediterranean, Black, and Red Seas, the Persian Gulf, and the Gulfs of Aden and Oman.

Agreement No.: 012254.

Title: NYK/NMCC North America/Red Sea & Persian Gulf Space Charter Agreement.

Parties: Nippon Yusen Kaisha and Nissan Motor Car Carrier Co., Ltd. and World Logistics Service (U.S.A.), Inc.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004.

Synopsis: The agreement authorizes NYK to charter space to NMCC in the trade between the United States and the Middle East (Jordan, Saudi Arabia, Oman, United Arab Emirates, Bahrain, Qatar, Kuwait, Iraq, and Yemen).

Agreement No.: 012255.

Title: Hoegh/NMCC Space Charter Agreement.

Parties: Hoegh Autoliners AS and Nissan Motor Car Carrier Co., Ltd. and World Logistics Service (U.S.A.), Inc.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004.

Synopsis: The agreement authorizes the parties to charter space on each other's vessels in the trade between Mexico and the U.S. East and Gulf Coasts.

Agreement No.: 012256.

Title: CHE Vessel Sharing Agreement.

Parties: COSCO Container Lines Company, Limited; Hanjin Shipping Co., Ltd.; and Evergreen Line Joint Service Agreement.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004.

Synopsis: The agreement authorizes the parties to charter space on each other's vessels, coordinate sailings, and otherwise cooperate in the carriage of cargo in the trade between China (including Hong Kong), Taiwan, Singapore, Japan, Korea, and Sri Lanka, on the one hand, and the U.S. East Coast, on the other hand.

Agreement No.: 012257.

Title: Zim/Turkon Slot Charter Agreement.

Parties: ZIM Integrated Shipping Services, Ltd. and Turkon Container Transportation & Shipping Inc.

Filing Party: Mark E. Newcomb; ZIM American Integrated Shipping Services Co., LLC; 5801 Lake Wright Dr.; Norfolk, VA 23508.

Synopsis: The agreement authorizes Turkon to charter space to ZIM in the trade between Greece and the U.S. East Coast. The parties have requested expedited review.

By Order of the Federal Maritime Commission.

Dated: March 21, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–06711 Filed 3–26–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

March 24, 2014.

TIME AND DATE: 10:00 a.m., Thursday, April 10, 2014.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Wolf Run Mining Co.,* Docket Nos. WEVA 2006–853, *et al.* (Issues include whether the Administrative Law Judge erred in concluding that a violation of a lightning arrester standard was not ''significant and substantial.'')

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2014–06904 Filed 3–25–14; 11:15 am]

BILLING CODE 6735–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: 201403–0990–004–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new generic clearance for information collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before April 28, 2014.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier 201403–0990–004–30D for reference.

Information Collection Request Title: ASPE Generic Clearance for the Collection of Qualitative Research and Assessment.

Abstract: The Office of the Assistant Secretary for Planning and Evaluation at the Department of Health and Human Services (HHS) is requesting a generic clearance for purposes of conducting qualitative research.

Need and Proposed Use of the Information: The information collected will be used to gain a better understanding of emerging health policy issues, develop future intramural and extramural research projects, and to ensure HHS leadership, agencies and offices have recent data and information to inform program and policy decision-making.

Likely Respondents: Policy experts, national, state, and local health representatives, healthcare providers, and representatives of other health organizations.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Health Policy Stakeholder	747	1	1	747

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2014–06765 Filed 3–26–14; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0238]

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 24, 2014, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Main Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD 20879. The hotel's telephone number is 301–948–8900.

Contact Person: Avena Russell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD 20993–0002, *Avena.Russell@fda.hhs.gov,* 301–796–3805, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On April 24, 2014, the committee will discuss the current knowledge about the safety and effectiveness of aversive conditioning devices that are intended to deliver a noxious electrical stimulus to a patient to modify undesirable behavioral characteristics. FDA is convening this committee to seek clinical and scientific expert opinion on the risks and benefits of certain aversive conditioning devices based on available scientific data and information. The Agency is considering whether to ban aversive conditioning devices that are intended to administer a noxious electrical stimulus to a patient to modify undesirable behavioral characteristics. The meeting will concern only devices classified under 21 CFR 882.5235 (aversive conditioning device, class II) that are not self-administered. Devices which deliver a noxious electrical stimulus automatically are not considered to be self-administered devices. Section 516 of the FD&C Act (21 U.S.C. 360f) sets forth the standard for banning devices. Under that provision, in order to ban a device, FDA must make a finding that a device ''presents substantial deception or an unreasonable and substantial risk of illness or injury'' based on all available data and information. FDA regulations provide additional details about the procedures and standards for banning a device (21 CFR part 895).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: FDA will work with affected industry, professional organizations, and societies that have an interest in aversive conditioning devices and who wish to make a presentation separate from the general open public hearing; time slots on April 24, 2014, between approximately 11 a.m. and 12 p.m. Representatives from industry, professional organizations and societies interested in making formal presentations to the committee should notify the contact person on or before March 28, 2014.

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 14, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 4, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 7, 2014.

FDA is opening a docket for public comment on this document. The docket number is FDA–2014–N–0238. The docket will close on June 24, 2014. Interested persons are encouraged to use the docket to submit electronic or written comments regarding this meeting. Comments received on or before April 14, 2014, will be provided to the committee for their consideration. Comments received after May 27, 2014 will be taken into consideration by the Agency.

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.*

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at *Annmarie.Williams@fda.hhs.gov,* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 20, 2014.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2014–06766 Filed 3–26–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0021]

AbbVie Inc., et al.; Proposal To Withdraw Approval of Abbreviated New Drug Applications for Prescription Pain Medications Containing More Than 325 Milligrams of Acetaminophen; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity to request a hearing on the Agency's proposal to withdraw approval of abbreviated new drug applications (ANDAs) from multiple sponsors for prescription pain medications containing more than 325 milligrams (mg) of acetaminophen. The basis for this proposal is that the Agency has determined that fixed-combination prescription drugs containing more than 325 mg of acetaminophen per dosage unit (tablet or capsule) do not provide a sufficient margin of safety to protect the public against the serious risk of acetaminophen-induced liver injury.

DATES: Submit written requests for a hearing by April 28, 2014; submit data and information in support of the hearing request by May 27, 2014.

ADDRESSES: Identify your requests for a hearing, supporting data, and other comments with Docket No. FDA–2011–N–0021 and submit this information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Rachel Turow, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–5094.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 2011 (76 FR 2691), FDA published a notice announcing its plans to reduce the maximum dosage unit strength of acetaminophen in prescription drug products. The notice announced FDA's conclusion that, based on a reevaluation of the relative risks and benefits of prescription acetaminophen products, fixed-combination prescription drugs containing more than 325 mg of acetaminophen per dosage unit (tablet or capsule) do not provide a sufficient margin of safety to protect the public against the serious risk of acetaminophen-induced liver injury. Accordingly, we asked product sponsors to limit the maximum amount of acetaminophen per dosage unit to 325 mg and, for those products containing more than 325 mg of acetaminophen per dosage unit, to submit requests that FDA withdraw approval of their applications under § 314.150(d) (21 CFR 314.150(d)). FDA asked that all such requests be made before January 14, 2014, after which date the Agency would use its authority under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(e)) to initiate approval withdrawal proceedings for any prescription drug products containing more than 325 mg of acetaminophen per dosage unit that remain on the market. The full text of that notice is provided in this document, and provides a detailed description and analysis of the specific facts resulting in today's action.

FDA did not receive a request for withdrawal of approval of an application containing more than 325 mg of acetaminophen per dosage unit from one sponsor. In addition, FDA received requests for withdrawal of approval of applications for products containing more than 325 mg of acetaminophen per dosage unit for which sponsors either submitted requests under § 314.150(c) or failed to cite a relevant regulatory provision. FDA contacted all of these sponsors on multiple occasions to ask that they submit a request that FDA withdraw approval of their applications under § 314.150(d), but they failed to respond.

With respect to those applications for which FDA received no request for withdrawal, FDA is proceeding under § 314.150(a) and (b) to withdraw approval. With respect to requests for withdrawal of approval submitted under § 314.150(c), the Agency notes that because FDA has made a determination under § 314.150(a) that approval of these applications should be withdrawn for reasons of safety, application holders may not withdraw their applications pursuant to § 314.150(c). The text of § 314.150(c) expressly precludes withdrawal of an application under the subsection if FDA has made a safety determination under § 314.150(a). Similarly, when a request for withdrawal is made without a citation to any regulation, FDA is not appropriately notified that an application holder has voluntarily waived the opportunity for a hearing. Accordingly, FDA has determined to proceed with withdrawal of approval of applications for which sponsors either submitted requests under § 314.150(c) or failed to cite a relevant regulatory provision pursuant to the withdrawal procedures outlined in §§ 314.150 (a) and (b).

Table 1 lists the applications for products for which FDA received no request for withdrawal, a request for withdrawal citing § 314.150(c), or a request for withdrawal with no regulatory citation.

TABLE 1—APPLICATIONS FOR FIXED-COMBINATION PRESCRIPTION DRUGS CONTAINING MORE THAN 325 MG OF ACETAMINOPHEN PER DOSAGE UNIT THAT HAVE NOT BEEN VOLUNTARILY WITHDRAWN AS OF JANUARY 14, 2014

Application No.	Drug product(s)	Applicant or holder	Reason
ANDA 40117	Vicodin HP (Acetaminophen and Hydrocodone Bitartrate Tablets), 660 mg/10 mg.	AbbVie Inc., 1 N. Waukegan Rd., North Chicago, IL 60064.	Submitted a voluntary request for withdrawal under § 314.150(c).
ANDA 88058	Vicodin (Acetaminophen and Hydrocodone Bitartrate Tablets), 500 mg/5 mg.	AbbVie Inc	Submitted a voluntary request for withdrawal under § 314.150(c).
ANDA 89736	Vicodin ES (Acetaminophen and Hydrocodone Bitartrate Tablets), 750 mg/7.5 mg.	AbbVie Inc	Submitted a voluntary request for withdrawal under § 314.150(c).

TABLE 1—APPLICATIONS FOR FIXED-COMBINATION PRESCRIPTION DRUGS CONTAINING MORE THAN 325 MG OF ACETAMINOPHEN PER DOSAGE UNIT THAT HAVE NOT BEEN VOLUNTARILY WITHDRAWN AS OF JANUARY 14, 2014—Continued

Application No.	Drug product(s)	Applicant or holder	Reason
ANDA 89166	SYNALGOS–DC–A (Acetaminophen, Caffeine, and Dihydrocodeine Bitartrate Capsules), 356.4 mg/30 mg/16 mg.	Leitner Pharmaceuticals LLC, 340 Edgemont Ave., Bristol, TN 37620.	Did not submit a voluntary request for withdrawal.
ANDA 40366	Acetaminophen and Hydrocodone Bitartrate Oral Solution, 500 mg/15 mL; 7.5 mg/15 mL.	Nesher Pharmaceuticals USA LLC, 13910 St. Charles Rock Rd., Bridgeton, MO 63044.	Submitted a voluntary request for withdrawal under § 314.150(c).
ANDA 40182	Acetaminophen and Hydrocodone Bitartrate Oral Solution, 500 mg/15 mL; 7.5 mg/15 mL.	Pharmaceutical Associates, Inc., 201 Delaware St., Greenville, SC 29605.	Submitted a voluntary request for withdrawal, but failed to cite the appropriate regulatory provision.
ANDA 40825	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Ranbaxy Laboratories Inc., C/O Ranbaxy Inc., 600 College Rd. East, Princeton, NJ 08540.	Submitted a voluntary request for withdrawal, but failed to cite the appropriate regulatory provision.
ANDA 40824	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/10 mg.	Ranbaxy Laboratories Inc., C/O Ranbaxy Inc., 600 College Rd., East, Princeton, NJ 08540.	Submitted a voluntary request for withdrawal, but failed to cite the appropriate regulatory provision.
ANDA 40822	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Ranbaxy Laboratories Ltd., C/O Ranbaxy Inc., 600 College Rd. East, Ste. 2100, Princeton, NJ 08540.	Submitted a voluntary request for withdrawal, but failed to cite the appropriate regulatory provision.
ANDA 040637.	Acetaminophen, Caffeine, and Dihydrocodeine Bitartrate Tablets, 712.8 mg/60 mg/32 mg.	West-Ward Pharmaceutical Corp., 435 Industrial Way West, Eatontown, NJ 07724.	Submitted a voluntary request for withdrawal, but failed to cite the appropriate regulatory provision.

Under section 505(e) of the FD&C Act (21 U.S.C. 355(e)) and § 314.150(a) (21 CFR 314.150(a)), and under authority delegated to her by the Commissioner of Food and Drugs, the Director, Center for Drug Evaluation and Research (CDER), has evaluated the information discussed in this notice and in the January 14, 2011, **Federal Register** notice and, on the grounds stated, is proposing to withdraw approval of the applications listed in table 1 of this document and all amendments and supplements thereto for unit dose strengths greater than 325 mg. This proposal is made on the grounds that, based on consideration of new evidence together with the evidence available to FDA when the applications were approved, the drugs are no longer safe for use under the conditions of use upon the basis of which they were approved.

Therefore, in accordance with section 505(e) of the FD&C Act and §§ 314.150 and 314.200 (21 CFR 314.150(a) and 314.200)), notice is given to the holders of the ANDAs listed in table 1, and to all other interested persons, that FDA is hereby providing the holders the opportunity to request a hearing to show why approval of the applications listed should not be withdrawn.

Any holder that decides to seek a hearing must file: (1) On or before April 28, 2014, a written notice of appearance and request for a hearing; and (2) on or before May 27, 2014, the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of material fact that requires a hearing to resolve, as specified in § 314.200.

Any other interested person may also submit comments on this notice on or before May 27, 2014. The procedures and requirements governing this notice of opportunity for a hearing, notice of participation and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 and in 21 CFR part 12.

The failure of a holder to file a timely written notice of participation and request for a hearing, as required by § 314.200, constitutes an election by that holder not to avail itself of the opportunity to request a hearing concerning the action proposed and constitutes a waiver of any contentions concerning the legal status of that holder's drug products. In such instance, FDA intends to withdraw approval of the applications and to take other appropriate action. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rely upon allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request that there is no genuine and substantial issue of fact, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

The following is the text of the January 14, 2011, **Federal Register** notice entitled ''Prescription Drug Products Containing Acetaminophen; Actions to Reduce Liver Injury From Unintentional Overdose.''

I. Acetaminophen Drug Products and Liver Injury

Acetaminophen is the generic name of a drug used in many over-the-counter (OTC) oral pain-relievers such as Tylenol, and in prescription combination drug products such as Vicodin and Percocet. Acetaminophen is one of the most widely used drugs in the United States in both prescription and OTC products. This notice applies only to acetaminophen-containing drug products that are labeled for prescription use and marketed under approved new drug applications (NDAs) or abbreviated new drug applications (ANDAs). OTC acetaminophen drug products are not affected by this notice.[1]

[1] FDA continues to monitor the occurrence of adverse events associated with both prescription

Continued

All acetaminophen-containing prescription products are combinations with other drug ingredients, primarily opioids in various strengths. These other drug ingredients include the opioids hydrocodone bitartrate (e.g., Vicodin), oxycodone hydrochloride, (e.g., Percocet), codeine phosphate (e.g., Tylenol with Codeine), dihydrocodeine, tramadol hydrocholoride, and pentazocine hydrochloride, as well as butalbital (a barbiturate) and caffeine (a stimulant).[2] General references to ''acetaminophen combinations'' or ''acetaminophen combination products'' in this notice refer to all such products. There are no prescription drug products that contain only acetaminophen.

Prescription combination drugs account for approximately 20 percent of the total acetaminophen drug market, and include some of the most widely prescribed and sold prescription drug products in the United States. (The remaining 80 percent of the acetaminophen drug market consists of OTC products.) Acetaminophen-hydrocodone combinations account for more than half of all prescriptions for acetaminophen combination drug products in the United States, and for many years, have also been the most-prescribed products in the U.S. retail market (Ref. 1). Unlike other drugs commonly used to reduce pain and fever (e.g., nonsteroidal anti-inflammatory drugs (NSAIDS) such as aspirin, ibuprofen, and naproxen), at recommended doses acetaminophen does not cause gastro-intestinal discomfort and/or bleeding. However, despite its wide use, long acceptance, and therapeutic utility, acetaminophen does pose risks. Acetaminophen overdose can cause liver damage (hepatotoxicity), ranging in severity from abnormalities in liver function to acute liver failure (ALF), and even death (Ref. 1). Acetaminophen overdose has become the leading cause of ALF as well as a leading cause of death from ALF in the United States (Refs. 2–4). Based on extrapolation from regional results in the first population-based study of ALF conducted in the United States, an estimated national total of 1,600 cases of ALF may occur each year (Ref. 3).

Acetaminophen-induced liver injury is caused by the effects of a toxic metabolite of acetaminophen, N-acetyl-p-benzoquinone imine (NAPQI) that is produced when acetaminophen is broken down by the body (Ref. 5). With low doses of acetaminophen, the amount of NAPQI produced is low and an individual's body usually has sufficient intracellular glutathione levels to bind to the NAPQI and prevent toxicity (Ref. 6). With higher acetaminophen levels and greater NAPQI production, NAPQI binds to liver proteins, causing cellular injury that can lead to liver failure and death (Refs. 4, 7).

The likelihood and severity of liver injury is influenced by the amount of acetaminophen that is ingested and the ability of an individual's liver to effectively remove it from the body. In most cases, glutathione levels are more than sufficient to conjugate the small amount of NAPQI produced by therapeutic doses of acetaminophen (Ref. 6). However, some people may have increased risk for liver injury following exposure to therapeutic doses or overdoses of acetaminophen due to reduced glutathione stores, induced cytochrome P450 enzymatic activity, or states of oxidative stress. Increased risk may be associated with a wide variety of conditions, such as Acquired Immune Deficiency Syndrome, chronic alcoholism, acute excess alcohol use, and use of anticonvulsant or antituberculosis medications (Refs. 8–9). Acetaminophen poisoning is treated with the drug N-acetylcysteine (NAC), which helps prevent toxicity by inactivating NAPQI. However, NAC does not reverse liver cell damage that has already occurred (Ref. 10).

The public health burden of acetaminophen-associated overdoses has been estimated using data from a variety of national databases and other resources.[3] A summary of data from four different surveillance systems indicates that there were an estimated 56,000 emergency room visits, 26,000 hospitalizations, and 458 deaths per year related to acetaminophen-associated overdoses during the 1990s (Ref. 10). Within these estimates, unintentional acetaminophen overdose accounted for nearly 25 percent of the emergency department visits, 10 percent of the hospitalizations, and 25 percent of the deaths (Ref. 10).

Prescription products contribute significantly to the toll of liver damage from both unintentional and intentional acetaminophen overdoses. For example, in the study of ALF patients by Larson et al., 63 percent of the unintentionally overdosed subjects and 18 percent of intentionally overdosed subjects had taken prescription acetaminophen combination products prior to injury (Ref. 4). According to data from the Toxic Exposure Surveillance System (now named the National Poison Data System (NPDS)), 30 percent of all acetaminophen-associated calls to poison centers in 2005 involved prescription acetaminophen combination products (41,999 of 138,602 calls). Prescription acetaminophen combination products were involved in approximately 44 percent of acetaminophen-associated calls that resulted in serious injury (1,470 of 3,310 calls) and 48 percent (161 of 333 calls) of acetaminophen associated calls that resulted in fatalities (Ref 11).[4]

In addition, there is a high incidence of cases of unintentional acetaminophen overdose, which should be preventable. In a population-based study of ALF conducted in the United States, 45 percent of adult ALF cases were associated with acetaminophen use and 55 percent of those were related to unintentional overdose (Ref. 3). In another study, similarly, approximately half of the cases of acetaminophen-induced ALF were due to unintentional overdose (Ref. 4).

There is no single factor that accounts for the high incidence of unintentional acetaminophen overdose. Multiple distinct factors appear to contribute to the problem, including the following:

- Given the large number and wide array of OTC and prescription acetaminophen products and indications, consumers may unintentionally overdose by taking more than one acetaminophen product at the same time without realizing that acetaminophen is a common ingredient.
- Patients may be unaware that their prescription pain relief products contain

and OTC acetaminophen products. Any action relating to additional safety measures for OTC acetaminophen products will be taken separately from this notice, through rulemaking as part of the ongoing OTC monograph proceeding for internal analgesic drug products.

[2] The opioid ingredient propoxyphene has also been widely used in combination with acetaminophen under the brand name Darvocet as well as in many generic products. On November 19, 2010, FDA announced that Darvocet was being voluntarily withdrawn from the market at FDA's request due to significant safety concerns about propoxyphene. FDA also requested that makers of generic propoxyphene-acetaminophen combination products withdraw their products from the market. Additional information about the status of propoxyphene-containing drug products can be found on FDA's Web site at *http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm233800.htm.*

[3] These include, among others: Emergency department data from the National Electronic Injury Surveillance System All Injury Program and the National Hospital Ambulatory Medical Care Survey-Emergency Department; hospitalization data from the National Hospital Discharge Survey; and mortality data from the National Multiple Cause of Death File.

[4] The NPDS data include all acetaminophen-related calls, including calls relating to both prescription and OTC products, and calls that do not involve liver damage. ''Serious injury'' includes, but is not limited to, serious liver damage caused by acetaminophen.

acetaminophen because the ingredient is often identified on pharmacy drug containers only as ''APAP,'' an acronym based on the chemical name of acetaminophen (N-acetyl-para-aminophenol), or by an abbreviation such as ''ACET.'' Such terms are not generally understood by the public to mean that a product contains acetaminophen.

- Patients may take more than the maximum number of labeled or prescribed doses seeking additional therapeutic benefit, unaware that they are taking too much acetaminophen.
- Experts agree that taking a large amount of acetaminophen over a short period of time causes liver injury, but a specific threshold dose for toxicity has not been established and may not be the same for all persons. Based on available information, we cannot currently identify all of the factors that might increase an individual's risk of acetaminophen toxicity, particularly at doses near the current recommended total daily dose of 4,000 mg per day (Refs. 5 and 7).
- NAC, the antidote for acetaminophen poisoning, is most effective when given in the first 8 hours after an acute overdose and has been shown to have benefit up to 24 hours and possibly later (Ref. 10). Victims of unintentional acetaminophen overdose may not be treated within that time because the symptoms of liver damage can take several days to emerge, even in severe cases, and are not readily associated by patients or clinicians with acetaminophen poisoning (Ref. 5).
- Patients do not realize that acetaminophen can cause severe liver injury if the recommended dose is exceeded. In 2004, FDA launched a public education program to help inform consumers about the potential for acetaminophen to cause liver injury. Since that time, FDA has provided materials for use in a wide variety of media and tailored for users of both prescription and OTC acetaminophen products. The continued occurrence of liver injury associated with prescription acetaminophen combinations notwithstanding those efforts suggests that additional interventions are needed.

II. FDA's Acetaminophen Safety Initiatives

FDA has been working to reduce the incidence of acetaminophen-related liver injury since the early 1990s, when the scope of the problem began to become evident. In addition to the scientific activities described in section I of this document, we have been active in acetaminophen safety education for consumers and health care professionals. In particular, we are currently working with the National Association of State Boards of Pharmacy, to urge state authorities to adopt rules replacing the term ''APAP'' and other abbreviations with ''acetaminophen'' on pharmacy containers. Our dedicated Web page on acetaminophen safety provides access to educational information along with links to additional scientific and regulatory resources. This information can be viewed at *http://www.fda.gov/Drugs/DrugSafety/InformationbyDrugClass/ucm165107.htm.*

Most importantly, as the Federal Agency responsible for the science-based regulatory oversight of drug products, we have continued to identify and pursue additional regulatory measures to reduce the risk of acetaminophen-induced liver injury. Rulemaking initiatives to date have focused largely on OTC acetaminophen products under our ongoing monograph proceeding for OTC internal analgesic, anti-inflammatory and antipyretic drug products. In 2002, we conducted a comprehensive review of the available data on acetaminophen and liver injury. The data were presented for consideration by the Non-Prescription Drug Advisory Committee (2002 Advisory Committee) [5] whose members unanimously agreed that the evidence of risk associated with the unintentional overdose of acetaminophen warranted labeling changes.[6] The 2002 Advisory Committee also considered whether a lower dose that would be safe for alcohol users or other sensitive subpopulations could be identified, but concluded that current data were insufficient for this purpose.[7] Based in part on the 2002 Committee's recommendations, in 2009 the Agency issued a new final rule requiring specific liver injury warnings and related labeling for OTC acetaminophen drugs (final rule, 74 FR 19385, April 29, 2009 and technical amendment, 74 FR 61512, November 25, 2009).

In 2007, the Director of CDER convened a multidisciplinary working group in CDER to update, review, and report on the full range of medical data and to propose additional regulatory options for both prescription and OTC acetaminophen drug products. On June 29 and 30, 2009, FDA held a joint meeting of the Drug Safety and Risk Management Advisory Committee, the Nonprescription Drugs Advisory Committee, and the Anesthetic and Life Support Drugs Advisory Committee (2009 Advisory Committee) to consider the collected data and related public testimony and make recommendations concerning further regulatory options for both prescription and OTC acetaminophen drugs. Detailed information on the 2009 Advisory Committee's deliberations and the evidence it considered are available on FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/Calendar/ucm143083.htm.* After reviewing and discussing the evidence presented, the 2009 Advisory Committee recommended a range of additional regulatory actions such as adding a boxed warning to prescription acetaminophen products, withdrawing prescription combination products from the market, or reducing the amount of acetaminophen in each dosage unit.[8]

FDA has determined that reducing the dosage unit strength of acetaminophen in prescription products is necessary to reduce the risk of liver injury associated with prescription acetaminophen combinations, and to ensure safe use of acetaminophen combinations. FDA is issuing this notice as the first step towards implementing this change. In deciding to take this step, we considered the 2009 Advisory Committee's recommendations and the Agency's evaluation of the available

[5] Meeting of the Non-Prescription Drug Advisory Committee with members from the Anesthetic and Life Support Drugs Advisory Committee, Arthritis Advisory Committee, Drug Safety and Risk Management Advisory Committee, and Gastrointestinal Drugs Advisory Committee, September 19 and 20, 2002, (2002 Advisory Committee). Detailed information on this meeting can be viewed electronically at *http://www.fda.gov/ohrms/dockets/ac/cder02.htm#NonprescriptionDrugs.*

[6] 2002 Advisory Committee Transcript, September 19, 2002, discussion at 160–182.

[7] 2002 Advisory Committee Transcript, *supra* at 182–221.

[8] Among other recommendations, 24 of the 37 Advisory Committee members recommended reducing the amount of acetaminophen per single adult dose in OTC products to 650 milligrams per dose (i.e., two 325 mg tablets or capsules). With respect to prescription products, the Advisory Committee overwhelmingly voted to require a boxed warning for prescription acetaminophen combinations, and slightly more than half favored eliminating prescription acetaminophen combinations entirely (with the option of prescribing single-entity opioids instead). While not offered as a voting option, the alternative of reducing the amount of acetaminophen per dosage unit in prescription combination products was recommended by a number of Advisory Committee members. See FDA, Joint Meeting of the Drug Safety and Risk Management Advisory Committee, Nonprescription Drugs Advisory Committee, and the Anesthetic and Life Support Drugs Advisory Committee To Address the Public Health Problem of Liver Injury Related to the Use of Acetaminophen in Both Over-the-Counter and Prescription Drugs, June 30, 2009, at 658–672 (Vote on Question 2), 771–801 (Vote on Question 7), 802–842 (Vote on Question 9 and Discussion of Question 11).

data on both prescription and OTC products. The data and the 2009 Advisory Committee's recommendations on OTC products are relevant to prescription acetaminophen combinations for several reasons. The mechanism of acetaminophen-related liver injury is the same for both OTC and prescription drug products. In addition, while the range of acetaminophen strengths is much greater for prescription than for OTC products, the most widely used acetaminophen dosage unit in both prescription and OTC products is 500 mg. All acetaminophen products likewise share the same maximum recommended daily dose (4,000 mg). As a result, our safety evaluation of prescription acetaminophen products draws on the common body of evidence and expert advice about all acetaminophen products, as well as important factors that are specific to the prescription products and how they are used.

III. FDA's New Safety Measures for Prescription Acetaminophen Drug Products

A. Safety Labeling Changes

Consistent with the advice of the 2009 Advisory Committee, FDA today is issuing letters to holders of approved NDAs and ANDAs (if the same drug approved under section 505(b) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(b)) is not currently marketed) for prescription acetaminophen drugs, notifying them of the need to modify the labeling of prescription acetaminophen drugs to reflect new safety information about acetaminophen and liver toxicity. Our authority for this action is section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), which was added to the FD&C Act by the Food and Drug Administration Amendments Act of 2007. This provision authorizes FDA to require certain holders of approved new drug applications to make safety-related labeling changes based on new safety information that becomes available after approval of the drug.[9]

The letters issued today propose that the sponsors of prescription acetaminophen drugs make various modifications to their drugs' approved labeling, including adding the following as a boxed warning:

Hepatotoxicity

[DRUG NAME] contains acetaminophen and [INGREDIENT]. Acetaminophen has been associated with cases of acute liver failure, at times resulting in liver transplant and death. Most of the cases of liver injury are associated with the use of acetaminophen at doses that exceed 4,000 milligrams per day, often in combination with other acetaminophen-containing products.

The safety labeling changes will be required for all prescription drug products containing acetaminophen. In accordance with section 505(o)(4)(B) of the FD&C Act, within 30 days of the date of the letters, the holders of approved applications for prescription acetaminophen drugs must submit to FDA a supplement proposing labeling changes that reflect the new safety information about acetaminophen and liver toxicity, or a statement detailing the reasons why such a change is not warranted.

However, we do not believe that these safety labeling changes alone will adequately address the ongoing problem of liver injury associated with prescription acetaminophen combinations. Accordingly, we are taking additional steps to reduce the amount of exposure to acetaminophen from these products, as described in the following discussion.

B. Limiting the Amount of Acetaminophen in Prescription Combination Products

1. How and Why We Are Limiting Acetaminophen Content

In light of the information described previously, we have re-evaluated the relative risks and benefits of prescription acetaminophen products and have concluded that acetaminophen prescription drugs containing more than 325 mg of acetaminophen per dosage unit (tablet or capsule) do not provide a sufficient margin of safety to protect the public against the serious risk of acetaminophen-induced liver injury. Accordingly, we are asking product sponsors to limit the maximum amount of acetaminophen per dosage unit of the combination product (''acetaminophen strength'') to 325 mg. We are basing this change on multiple considerations, including the following:

- The significant contribution made by prescription products to the continued and unacceptably high incidence of acetaminophen-related liver injury;
- The need to establish an adequate margin of safety given the current inability to identify precise toxicity thresholds and/or specific populations for whom currently recommended dosages are not safe;
- The high potential for unintentional overdosing; and
- The lack of evidence from which to conclude that the benefit of increased pain relief or dosing convenience from higher acetaminophen strengths outweighs the risk of liver damage from unintentional overdose.

The intended effect of reducing the amount of acetaminophen to 325 mg per dosage unit is to reduce the potential for exceeding the toxic threshold of the drug that could cause liver injury. This change is intended to reduce the risk of unintentional acetaminophen overdose by providing an additional margin of safety for all users, including individuals who, for a variety of reasons (e.g., existing liver disease, chronic alcohol use) are particularly susceptible to liver injury from acetaminophen. The change is consistent with the fundamental principle that the benefit-to-risk ratio of a drug must be considered in determining safety and effectiveness, and the safety of a drug can only be established if its benefits outweigh its known and potential risks. Additionally, as discussed in the following section, many acetaminophen combinations are already approved at the 325-mg acetaminophen strength and thus can provide a basis for further generic approvals at the new maximum dosage unit strength.

It is not possible, based on currently available information, to quantify precisely to what extent reducing the maximum acetaminophen strength of acetaminophen combination drugs will reduce the incidence of liver injury. However, data from Larson et al. (Ref. 4) suggest that the effect could be considerable. In that study, the median dose of acetaminophen taken by 77 people with an unintentional overdose was 7,500 mg per day. Assuming that they took 500 mg tablets (currently the most common prescription and OTC dosage strength), the total median dose for this group from taking the same number (15) of 325-mg tablets or capsules would have been only 4,875 mg, a level at which death or liver failure is unlikely to occur in most people.

2. How FDA Is Implementing the Limitation on Acetaminophen Strength

We have identified prescription acetaminophen drug products and product sponsors potentially affected by this notice based on information in the list of *Approved Drug Products With Therapeutic Equivalence Evaluations*

[9] Section 505(o)(4) of the FD&C Act also establishes the procedures for implementing safety labeling changes. The procedures include an opportunity for application holders to question the need for or specific wording of the labeling changes.

(the Orange Book).[10] Table 1 of this document provides an overview of approved new drug applications for currently marketed acetaminophen combination products grouped according to their active ingredients and acetaminophen strengths.[11]

TABLE 2—OVERVIEW OF CURRENTLY MARKETED PRESCRIPTION ACETAMINOPHEN PRODUCTS

Ingredient combination	N*—All Acetaminophen strengths	Acetaminophen strengths ≤325 mg	N*—Acetaminophen strengths ≤ 325 mg	Acetaminophen strengths >325 mg	N*—Acetaminophen strengths >325
Acetaminophen; Butalbital.	4	325 mg; 50 mg Tablets.	2	650 mg; 50 mg Tablets.	1.
				650 mg; 50 mg Capsules.	1.
			Total: 2		Total: 2.
Acetaminophen; Butalbital; Caffeine.	16	300 mg; 50 mg; 40 mg Capsules.	1	500 mg; 50 mg; 40 mg Tablets.	6.
		325 mg; 50 mg; 40 mg Tablets.	6	500 mg; 50 mg; 40 mg Capsules.	1.
		325 mg; 50 mg; 40 mg Capsules.	1	750 mg; 50 mg; 40 mg Tablet.	1.
			Total: 8		Total: 8.
Acetaminophen Codeine Phosphate.	24	300 mg; 15 mg Tablets.	6	None	0.
		300 mg; 30 mg Tablets.	10		
		300 mg; 60 mg Tablets.	8		
			Total: 24		Total: 0.
Acetaminophen; Hydrocodone.	88	300 mg; 5 mg Tablets	1	400 mg; 5 mg Tablets	1.
		300 mg; 7.5 mg Tablets.	1	400 mg; 7.5 mg Tablets.	1.
		300 mg; 10 mg Tablets.	1	400 mg; 10 mg Tablets.	1.
		325 mg; 2.5 mg Tablets.	1	500 mg; 2.5 mg Tablets.	4.
		325 mg; 5 mg Tablets	5	500 mg; 5 mg Tablets	12.
		325 mg; 7.5 mg Tablets.	5	500 mg; 7.5 mg Tablets.	7.
		325 mg; 10 mg Tablets.	7	500 mg; 10 mg Tablets.	7.
			Total: 21		
				500 mg; 5 mg Capsules.	2.
				650 mg; 5 mg Tablets	1.
				650 mg; 7.5 mg Tablets.	7.
					7.
					6.
					9.
					2.
					Total: 67.
Acetaminophen; Hydrocodone.	.....	300 mg; 5 mg Tablets	1	400 mg; 5 mg Tablets	1.
		300 mg; 7.5 mg Tablets.	1	400 mg; 7.5 mg Tablets.	1.
		300 mg; 10 mg Tablets.	1	400 mg; 10 mg Tablets.	1.
		325 mg; 2.5 mg Tablets.	1	500 mg; 2.5 mg Tablets.	4.
		325 mg; 5 mg Tablets	5	500 mg; 5 mg Tablets	12.
		325 mg; 7.5 mg Tablets.	5	500 mg; 7.5 mg Tablets.	7.
		325 mg; 10 mg Tablets.	7	500 mg; 10 mg Tablets.	7.
			Total: 21		

[10] Detailed Orange Book listings, including specific application numbers and sponsors, can be viewed electronically by accessing FDA's Web site at *http://www.accessdata.fda.gov/scripts/cder/ob*, selecting ''Search by Active Ingredient,'' and entering ''acetaminophen'' in the search form.

[11] The figures in table 1 of this document do not include approved applications for combination products that are subject to the recently announced market withdrawal due to safety concerns related to propoxyphene. The table also excludes various approved combinations that are not currently marketed. These include: Acetaminophen; butalbital; caffeine; codeine (1 approved application with acetaminophen strength ≤325 mg); acetaminophen; caffeine; dihydrocodeine bitartrate (5 applications with acetaminophen strengths >325 mg;) acetaminophen; codeine phosphate (1 application with acetaminophen strength over 325 mg); acetaminophen; hydrocodone in solution dosage form (3 applications with acetaminophen strengths ≤325 mg; 6 with acetaminophen strengths >325 mg).

TABLE 2—OVERVIEW OF CURRENTLY MARKETED PRESCRIPTION ACETAMINOPHEN PRODUCTS—Continued

Ingredient combination	N *—All Acetaminophen strengths	Acetaminophen strengths ≤325 mg	N *—Acetaminophen strengths ≤ 325 mg	Acetaminophen strengths >325 mg	N *—Acetaminophen strengths >325
				500 mg; 5 mg Capsules.	2.
				650 mg; 5 mg Tablets	1.
				650 mg; 7.5 mg Tablets.	7.
				650 mg; 10 mg Tablets.	7.
				660 mg; 10 mg Tablets.	6.
				750 mg; 7.5 mg Tablets.	9.
				750 mg; 10 mg Tablets.	2.
					Total: 67.
Acetaminophen; Oxycodone HCl.	49	300 mg; 2.5 mg Tablets.	1	400 mg; 2.5 mg Tablets.	1.
		300 mg; 5 mg Tablets	1	400 mg; 5 mg Tablets	1.
		300 mg; 7.5 mg Tablets.	1	400 mg; 7.5 mg Tablets.	1.
		300 mg; 10 mg Tablets.	1	400 mg; 10 mg Tablets.	1.
		325 mg; 2.5 mg Tablets.	2	500 mg; 5 mg Tablets	1.
		325 mg; 5 mg Tablets	8	500 mg; 75 mg Tablets.	5.
		325 mg; 7.5 mg Tablets.	4	500 mg; 10 mg Tablets.	1.
		325 mg; 10 mg Tablets.	5	500 mg; 5 mg Capsules.	8.
		325 mg/5 ml; 5 mg/5 ml Oral Solution.	2	650 mg; 5 mg Tablets	4.
			Total: 25	650 mg; 10 mg Tablets.	1.
					Total: 24.
Acetaminophen; Pentazocine HCl.	2	None	0	650 mg; EQ 25 mg BASE Tablets.	2.
			Total: 0		Total: 2.
Acetaminophen; Tramadol HCL.	6	325 mg; 37.5 mg Tablets.	6		0.
			Total: 6	None	Total: 0.
	Grand Total: 189		Total: 86		Total: 103.

* N = number of approved applications.

As shown in table 1 of this document, there are 7 different prescription acetaminophen combinations currently marketed under a total of 189 approved active applications. The applications are held by a total number of 26 sponsors. Products with approved acetaminophen strengths of 325 mg or less per dosage unit (''lower acetaminophen strengths'') account for slightly fewer than half (86) of the approved applications but are much less widely marketed and prescribed than products with higher acetaminophen strengths.

We anticipate that drug sponsors who request that FDA withdraw approval of their higher acetaminophen strength applications under § 314.150(d) (21 CFR 314.150(d)) will wish to market the same combination of active ingredients with lower acetaminophen strength. For example, a sponsor that requests that FDA withdraw approval of its application for 500 mg of acetaminophen combined with 5 mg of hydrocodone in tablet dosage form presumably would want to remain on the market with a tablet product containing 5 mg of hydrocodone and no more than 325 mg of acetaminophen. Such a change will not require submission of an application by sponsors who already have approved applications for the lower strength product, as often is the case. However, sponsors who do not already have such approval would need to develop a new formulation with the lower acetaminophen strength, submit an appropriate application, and obtain FDA approval before marketing.

We anticipate that in virtually all cases the fastest and least burdensome route to approval for new lower acetaminophen strength versions of existing higher acetaminophen strength products will be through new ANDA submissions using another manufacturer's existing lower acetaminophen strength product as the reference listed drug (RLD).[12] For nearly all of the higher acetaminophen strength combinations, there is at least one

[12] For historical reasons, virtually all currently approved applications for prescription acetaminophen combination products are ANDAs rather than NDAs. Unlike NDAs, which may be supplemented to reflect changes in unit dosage strength or other product characteristics, products marketed under an approved ANDA must maintain the same strength as the RLD. Accordingly, if the acetaminophen strength of such a product is reformulated from, e.g., 500 mg to 325 mg, a new ANDA listing either an appropriate RLD having the new lower strength or an appropriate approved suitability petition as described in § 314.94(a)(3)(iii), must be approved before the reformulated product may be marketed.

appropriate RLD with an acetaminophen strength at or below 325 mg in the Orange Book. For a small minority of higher acetaminophen strength combinations, there is no approved lower acetaminophen strength product with the same active ingredients that could serve as the RLD. We believe that reformulations of these products, however, could be approved as ANDAs upon approval of an ANDA suitability petition (see section 505(j)(2)(C) of the FD&C Act and § 314.93 (21 CFR 314.93)) permitting the submission of an ANDA for a drug product that is not identical to the RLD in an active ingredient or unit dosage strength, or could be approved as NDAs following submission of applications with appropriate clinical studies.

We are establishing a timeframe for responding to this notice that takes into account the estimated time needed for sponsors to obtain necessary approvals and begin to market new products with lower acetaminophen strengths. We believe that a period of 3 years from publication of this notice in the **Federal Register** will provide adequate time for drug sponsors to prepare to withdraw existing products with higher acetaminophen strengths, and to develop and obtain approval for lower acetaminophen strength versions of those products. We also anticipate that this will provide sufficient time for drug sponsors with approved lower acetaminophen strength products to expand their production to meet the expected increase in demand for lower acetaminophen strength products when the higher strength products become unavailable.

We strongly encourage sponsors of combination prescription products with acetaminophen strengths greater than 325 mg to submit requests for withdrawal of those products' approved applications under § 314.150(d) within the 3-year period described previously. Sponsors who intend to seek approval of one or more new products with acetaminophen strengths of 325 mg or less are encouraged to submit appropriate applications for such products in time to obtain approval within the same period. To that end, we welcome inquiries and requests for consultation from sponsors relating to specific existing or proposed products in connection with this notice. Any such requests from sponsors of currently approved products affected by this notice should be made as correspondence under the affected application(s) and should reference this notice.

We are issuing this notice because we believe that voluntary action on the part of product sponsors to reduce the acetaminophen strengths of prescription acetaminophen combinations can achieve the needed increase in patient safety substantially sooner and with less burden on public and private resources than alternative regulatory measures. However, FDA has authority under section 505(e)(2) of the FD&C Act to withdraw approval of an NDA or ANDA if the Agency determines that the "* * * drug is not shown to be safe for use under the conditions of use upon the basis of which the drug was approved * * *" based on consideration of "* * * new evidence * * * together with the evidence available to [FDA] when the application was approved * * *." FDA regulations describe the procedures for withdrawing approval of an application. (See § 314.150 and 21 CFR 314.151, 314.200, 314.201, and 314.235). We intend to use our authority under section 505(e) of the FD&C Act to initiate withdrawal proceedings for any prescription acetaminophen combination products with acetaminophen strengths greater than 325 mg that remain on the market 3 years after the date of publication of this notice.

IV. References

FDA has verified the Web site address in this reference section, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.

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10. Nourjah, P. et al, "Estimates of Acetaminophen (Paracetamol)-induced Overdoses in the United States," Pharacoepidemiological Drug Safety, 6: 406–409, 2006.
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Dated: March 24, 2014.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2014–06802 Filed 3–26–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0021]

Actavis Totowa LLC, et al.; Withdrawal of Approval of Abbreviated New Drug Applications for Prescription Pain Medications Containing More Than 325 Milligrams of Acetaminophen

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 108 abbreviated new drug applications (ANDAs) for prescription pain medications containing more than 325 milligrams (mg) of acetaminophen. The holders of these ANDAs have voluntarily requested that approval of these applications be withdrawn and have waived their opportunity for a hearing.

DATES: Effective March 27, 2014.

FOR FURTHER INFORMATION CONTACT: Rachel Turow, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–5094.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 2011 (76 FR 2691), FDA announced its plans to reduce the maximum dosage unit strength of acetaminophen in prescription drug products. The notice

announced FDA's conclusion that, based on a reevaluation of the relative risks and benefits of prescription acetaminophen products, fixed-combination prescription drugs containing more than 325 mg of acetaminophen per dosage unit (tablet or capsule) do not provide a sufficient margin of safety to protect the public against the serious risk of acetaminophen-induced liver injury. Accordingly, we asked product sponsors to limit the maximum amount of acetaminophen per dosage unit to 325 mg and, for those products containing more than 325 mg of acetaminophen per dosage unit, to submit requests that FDA withdraw approval of their applications under § 314.150(d) (21 CFR 314.150(d)). FDA asked that all such requests be made before January 14, 2014. Table 1 lists the applications for which FDA has received such requests. The sponsors of the applications listed in table 1 have also waived their opportunity for a hearing.

TABLE 1—APPLICATIONS FOR WHICH WITHDRAWAL OF APPROVAL HAS BEEN REQUESTED

Application No.	Drug product(s)	Applicant or holder
ANDA 040199	Acetaminophen and Oxycodone Hydrochloride Capsules, 500 mg/5 mg.	Actavis Totowa LLC, 200 Elmora Ave., Elizabeth, NJ 07207.
ANDA 040748	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/7.5 mg.	Amneal Pharmaceuticals, 85 Adams Ave., Hauppauge, NY 11788.
ANDA 040754	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/7.5 mg.	Do.
ANDA 040757	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/10 mg.	Do.
ANDA 040769	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Do.
ANDA 040789	Acetaminophen and Oxycodone Hydrochloride Tablets, 500 mg/7.5 mg.	Do.
	Acetaminophen and Oxycodone Hydrochloride Tablets, 650 mg/10 mg.	Do.
ANDA 040813	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/10 mg.	Do.
ANDA 040729	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.
ANDA 040304	Acetaminophen and Oxycodone Hydrochloride Capsules, 500 mg/5 mg.	Barr Laboratories Inc., 2 Quaker Rd., P.O. Box 2900, Pomona, NY 10956.
ANDA 040307	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/2.5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/7.5 mg Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/10 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/7.5 mg.	Do.
ANDA 040308	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Do.
ANDA 040309	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/10 mg.	Do.
ANDA 040701	Acetaminophen, Caffeine, and Dihydrocodeine Bitartrate Tablets, 712.8 mg/60 mg/32 mg.	Boca Pharmacal LLC, 3550 Northwest 126th Ave., Coral Springs, FL 33065.
ANDA 090265	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/7.5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/10 mg.	Caraco Pharmaceutical Laboratories, Ltd., 270 Prospect Plains Rd., Cranbury, NJ 08512.
ANDA 090380	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/7.5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/10 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 660 mg/10 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Do.
ANDA 088898	Acetaminophen and Hydrocodone Bitartrate Capsules, 500 mg/5 mg.	Central Pharmaceuticals Inc., 110–128 East 3rd St., Seymour, IN 47274.
ANDA 090177	Acetaminophen and Oxycodone Hydrochloride Tablets, 500 mg/7.5 mg.	Do.
	Acetaminophen and Oxycodone Hydrochloride Tablets, 650 mg/10 mg.	Coastal Pharmaceuticals, 1240 Sugg Pkwy., Greenville, NC 27834.
ANDA 040289	Acetaminophen and Oxycodone Capsules, 500 mg/5 mg	Duramed Pharmaceuticals Inc., Sub Barr Laboratories Inc., 2 Quaker Rd., P.O. Box 2900, Pomona, NY 10970–0519.
ANDA 076202	Acetaminophen and Pentazocine Hydrochloride Tablets, 650 mg/EQ 25 mg Base.	Gavis Pharmaceuticals, LLC, 400 Campus Dr., Somerset, NJ 08873.
ANDA 089696	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Ivax Pharmaceuticals Inc., 140 Legrand Ave., Northvale, NJ 07647.

TABLE 1—APPLICATIONS FOR WHICH WITHDRAWAL OF APPROVAL HAS BEEN REQUESTED—Continued

Application No.	Drug product(s)	Applicant or holder
ANDA 089907	ALLAY (Acetaminophen and Hydrocodone Bitartrate) Capsules, 500 mg/5 mg.	Do.
ANDA 088790	TYLOX (Acetaminophen and Oxycodone Hydrochloride) Capsules, 500 mg/5 mg.	Janssen Research & Development, LLC, 920 U.S. Hwy. 202, P.O. Box 300, Raritan, NJ 08869.
ANDA 040084	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/10 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 660 mg/10 mg.	Mallinckrodt Chemical Inc., 675 McDonnell Blvd., Hazelwood, MO 63042.
ANDA 040201	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/7.5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/10 mg.	Do.
ANDA 040257	Acetaminophen and Oxycodone Hydrochloride Capsules, 500 mg/5 mg.	Do.
ANDA 087336	LORCET–HD (Acetaminophen and Hydrocodone Bitartrate) Capsules, 500 mg/5 mg.	Do.
ANDA 088956	Acetaminophen and Hydrocodone Bitartrate Capsules, 500 mg/5 mg.	Do.
ANDA 088991	BUCET (Acetaminophen and Butalbital) Capsules, 650 mg/50 mg.	Do.
ANDA 089006	Acetaminophen and Hydrocodone Bitartrate Capsules, 500 mg/5 mg.	Do.
ANDA 089160	ANEXSIA (Acetaminophen and Hydrocodone Bitartrate) Tablets, 500 mg/5 mg.	Do.
ANDA 089405	TENCON (Acetaminophen and Butalbital) Capsules, 650 mg/50 mg.	Do.
ANDA 089725	ANEXSIA 7.5/650 (Acetaminophen and Hydrocodone Bitartrate) Tablets, 650 mg/7.5 mg.	Do.
ANDA 040418	Acetaminophen and Hydrocodone Bitartrate Oral Solution, 500 mg/15 mL;7.5 mg/15 mL.	Do.
ANDA 040468	ANEXSIA (Acetaminophen and Hydrocodone Bitartrate) Tablets, 750 mg/10 mg.	Do.
ANDA 040508	Acetaminophen and Hydrocodone Bitartrate Oral Solution, 500 mg/15 mL;10 mg/15 mL.	Do.
ANDA 040550	Acetaminophen and Oxycodone Hydrochloride Tablets, 500 mg/7.5 mg.	Do.
	Acetaminophen and Oxycodone Hydrochloride Tablets, 650 mg/10 mg.	Do.
ANDA 040085	ESGIC–PLUS (Acetaminophen, Butalbital, and Caffeine) Capsules, 500 mg/50 mg/40 mg.	Mikart, Inc., 1750 Chattahoochee Ave., Atlanta, GA 30318.
ANDA 040496	Acetaminophen, Butalbital, and Caffeine Tablets, 750 mg/50 mg/40 mg.	Do.
ANDA 040676	Acetaminophen and Oxycodone Hydrochloride Tablets, 500 mg/10 mg.	Do.
ANDA 040679	Acetaminophen and Oxycodone Hydrochloride Tablets, 400 mg/2.5 mg.	Do.
ANDA 040687	Acetaminophen and Oxycodone Hydrochloride Tablets, 400 mg/5 mg.	Do.
ANDA 040692	Acetaminophen and Oxycodone Hydrochloride Tablets, 400 mg/10 mg.	Do.
ANDA 040698	Acetaminophen and Oxycodone Hydrochloride Tablets, 400 mg/7.5 mg.	Do.
ANDA 040849	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/5 mg.	Do.
ANDA 081051	Acetaminophen and Hydrocodone Bitartrate Oral Solution, 500 mg/15 mL; 7.5 mg/15 mL.	Do.
ANDA 081067	Acetaminophen and Hydrocodone Bitartrate Capsules, 500 mg/5 mg.	Do.
ANDA 081223	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/10 mg.	Do.
ANDA 089008	Acetaminophen and Hydrocodone Bitartrate Capsules, 500 mg/5 mg.	Do.
ANDA 089451	ESGIC–PLUS (Acetaminophen, Butalbital, and Caffeine) Tablets, 500 mg/50 mg/40 mg.	Do.
ANDA 089689	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/7.5 mg.	Do.
ANDA 089698	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/2.5 mg.	Do.

TABLE 1—APPLICATIONS FOR WHICH WITHDRAWAL OF APPROVAL HAS BEEN REQUESTED—Continued

Application No.	Drug product(s)	Applicant or holder
ANDA 089699	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/7.5 mg.	Do.
ANDA 089988	BUTAPAP (Acetaminophen and Butalbital) Tablets, 650 mg/50 mg.	Do.
ANDA 089231	Acetaminophen and Codeine Phosphate Tablets, 650 mg/30 mg.	Do.
ANDA 089271	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.
ANDA 089363	Acetaminophen and Codeine Phosphate Tablets, 650 mg/60 mg.	Do.
ANDA 040109	Acetaminophen, Caffeine, and Dihydrocodeine Bitartrate Capsules, 356.4 mg/30 mg/16 mg.	Do.
ANDA 040316	Acetaminophen, Caffeine, and Dihydrocodeine Bitartrate Tablets, 712.8 mg/60 mg/32 mg.	Do.
ANDA 081068	Acetaminophen and Hydrocodone Bitartrate Capsules, 500 mg/5 mg.	Do.
ANDA 081069	Acetaminophen and Hydrocodone Bitartrate Capsules, 500 mg/5 mg.	Do.
ANDA 081070	Acetaminophen and Hydrocodone Bitartrate Capsules, 500 mg/5 mg.	Do.
ANDA 089557	Acetaminophen and Hydrocodone Bitartrate Oral Solution, 500 mg/15 mL;5 mg/15 mL.	Do.
ANDA 089697	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.
ANDA 040883	Acetaminophen, Butalbital, and Caffeine Tablets, 500 mg/50 mg/40 mg.	Mirror Pharmaceuticals LLC, 140 New Dutch Lane, Fairfield, NJ 07004.
ANDA 040219	Acetaminophen and Oxycodone Capsules, 500 mg/5 mg	Mutual Pharmaceutical Co. Inc., 1100 Orthodox St., Philadelphia, PA 19124.
ANDA 040236	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Do.
ANDA 040240	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/10 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/7.5 mg.	Do.
ANDA 040061	ROXILOX (Acetaminophen and Oxycodone Hydrochloride) Capsules, 500 mg/5 mg.	Roxane Laboratories Inc., 1809 Wilson Rd., Columbus, OH 43228.
ANDA 089775	ROXICET 5/500 (Acetaminophen and Oxycodone Hydrochloride) Tablets, 500 mg/5 mg.	Do.
ANDA 040100	LORTAB (Acetaminophen and Hydrocodone Bitartrate) Tablets, 500 mg/10 mg.	UCB Inc., 1950 Lake Park Dr., Bldg. 2100, Smyrna, GA 30080.
ANDA 087722	LORTAB (Acetaminophen and Hydrocodone Bitartrate) Tablets, 500 mg/5 mg.	Do.
ANDA 087757	CO–GESIC (Acetaminophen and Hydrocodone Bitartrate) Tablets, 500 mg/5 mg.	Do.
ANDA 088831	PHRENILIN FORTE (Acetaminophen and Butalbital) Capsules, 650 mg/50 mg.	Valeant Pharmaceuticals North America LLC, 700 Route 202/206 North, Bridgewater, NJ 08807.
ANDA 040106	Acetaminophen and Oxycodone Hydrochloride Capsules, 500 mg/5 mg.	Vintage Pharmaceuticals, 150 Vintage Dr., Huntsville, AL 35811.
ANDA 040143	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/10 mg.	Do.
ANDA 040144	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/2.5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/7.5 mg.	Do.
ANDA 040155	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/7.5 mg.	Do.
ANDA 040157	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Do.
ANDA 040356	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/10 mg.	Do.
ANDA 040358	Acetaminophen and Hydrocodone Bitartrate Tablets, 660 mg/10 mg.	Do.
ANDA 040513	Acetaminophen, Butalbital, and Caffeine Tablets, 500 mg/50 mg/40 mg.	Do.
ANDA 040520	Acetaminophen and Hydrocodone Bitartrate Oral Solution, 500 mg/15 mL;7.5 mg/15 mL.	Do.
ANDA 089971	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.
ANDA 089831	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.

TABLE 1—APPLICATIONS FOR WHICH WITHDRAWAL OF APPROVAL HAS BEEN REQUESTED—Continued

Application No.	Drug product(s)	Applicant or holder
ANDA 040280	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/7.5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/10 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/7.5 mg.	Do.
ANDA 040281	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Do.
ANDA 040288	ZYDONE (Acetaminophen and Hydrocodone Bitartrate) Tablets, 400 mg/5 mg.	Do.
	ZYDONE (Acetaminophen and Hydrocodone Bitartrate) Tablets, 400 mg/7.5 mg.	Do.
	ZYDONE (Acetaminophen and Hydrocodone Bitartrate) Tablets, 400 mg/10 mg.	Do.
ANDA 040303	Acetaminophen and Oxycodone Hydrochloride Capsules, 500 mg/5 mg.	Do.
ANDA 040341	PERCOCET (Acetaminophen and Oxycodone Hydrochloride) Tablets, 500 mg/7.5 mg.	Do.
	PERCOCET (Acetaminophen and Oxycodone Hydrochloride) Tablets, 650 mg/10 mg.	Do.
ANDA 040371	Acetaminophen and Oxycodone Hydrochloride Tablets, 500 mg/7.5 mg.	Do.
	Acetaminophen and Oxycodone Hydrochloride Tablets, 650 mg/10 mg.	Watson Laboratories, 311 Bonnie Circle, Corona, CA 92880.
ANDA 040094	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/7.5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/10 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 660 mg/10 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/10 mg.	Do.
ANDA 040234	Acetaminophen and Oxycodone Hydrochloride Capsules, 500 mg/5 mg.	Do.
ANDA 040267	Acetaminophen, Butalbital, and Caffeine Tablets, 500 mg/50 mg/40 mg.	Do.
ANDA 081079	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/2.5 mg.	Do.
ANDA 081080	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/7.5 mg.	Do.
ANDA 081083	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Do.
ANDA 040122	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Do.
ANDA 040123	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/7.5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/2.5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/7.5 mg.	Do.
	Acetaminophen and Hydrocodone Bitartrate Tablets, 650 mg/10 mg.	Do.
ANDA 089883	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Do.
ANDA 040493	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Watson Laboratories Inc.—Florida, 2945 West Corporate Lakes Blvd., Suite B, Weston, FL 33331.
ANDA 040494	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Do.
ANDA 040495	Acetaminophen and Hydrocodone Bitartrate Tablets, 660 mg/10 mg.	Do.
ANDA 040441	CODRIX (Acetaminophen and Codeine Phosphate) Tablets, 500 mg/30 mg.	Do.
ANDA 040447	CODRIX (Acetaminophen and Codeine Phosphate) Tablets, 500 mg/15 mg.	Do.
ANDA 040488	CODRIX (Acetaminophen and Codeine Phosphate) Tablets, 500 mg/60 mg.	Do.
ANDA 040261	Acetaminophen, Butalbital, and Caffeine Capsules, 500 mg/50 mg/40 mg.	West-Ward Pharmaceutical Corp., 435 Industrial Way West, Eatontown, NJ 07724.

TABLE 1—APPLICATIONS FOR WHICH WITHDRAWAL OF APPROVAL HAS BEEN REQUESTED—Continued

Application No.	Drug product(s)	Applicant or holder
ANDA 040336	Acetaminophen, Butalbital, and Caffeine Tablets, 500 mg/50 mg/40 mg.	Do.
ANDA 040688	Acetaminophen, Caffeine, and Dihydrocodeine Bitartrate Capsules, 356.4 mg/30 mg/16 mg.	WraSer Pharmaceuticals LLC, 121 Marketridge Dr., Ridgeland, MS 39157.

Therefore, under § 314.150(d), and under authority delegated to the Director, Center for Drug Evaluation and Research, by the Commissioner of Food and Drugs, approval of the applications for the drug products listed in table 1 of this document, and all amendments and supplements thereto, is withdrawn (see **DATES**). Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

The safety issue discussed in this document and the January 14, 2011, **Federal Register** document is limited to products containing more than 325 mg of acetaminophen per dosage unit. Thus, the withdrawal of approval of products containing more than 325 mg of acetaminophen per dosage unit listed in table 1 does not change the approval status of any products with 325 mg or less of acetaminophen per dosage unit that were approved under the same application. In addition, the withdrawal of approval of products containing more than 325 mg of acetaminophen per dosage unit does not change the approval status of products with 325 mg or less of acetaminophen per dosage unit that refer to or rely on the withdrawn products. For example, this withdrawal action will not affect the approval status of an ANDA for a product that contains 325 mg or less per dosage unit that references a product listed in table 1, but for which FDA approved a suitability petition for a lower strength under section 505(j)(2)(C) of the FD&C Act and § 314.93 (21 CFR 314.93)).

Dated: March 24, 2014.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2014–06801 Filed 3–26–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on February 1, 2014, through February 28, 2014. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was

caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (*Petitioner's Name* v. *Secretary of Health and Human Services*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: March 20, 2014.

Mary K. Wakefield,

Administrator.

List of Petitions Filed

1. Douglas Fischer, Englewood, New Jersey, Court of Federal Claims No: 14–0096V
2. Robert Petrucelli, Meriden, Connecticut, Court of Federal Claims No: 14–0097V
3. Michael Greenberg, Key Biscayne, Florida, Court of Federal Claims No: 14–0098V
4. Suzanne Hackett, American Fork, Utah, Court of Federal Claims No: 14–0099V
5. Anil John Kukreja and Michal Kukreja on behalf of David Kukreja, Montclair, New Jersey, Court of Federal Claims No: 14–0104V
6. Elissa Cascio, Salt Lake City, Utah, Court of Federal Claims No: 14–0107V
7. Alexys Hebert, Lafayette, Louisiana, Court of Federal Claims No: 14–0109V
8. Madison and Sarah Lester on behalf of E.M.L., Baraboo, Wisconsin, Court of Federal Claims No: 14–0110V
9. Margaret Hopper, Maywood, Illinois, Court of Federal Claims No: 14–0111V
10. Yvonne Hooper, Houston, Texas, Court of Federal Claims No: 14–0112V
11. Lynn Johnson on behalf of E.J., Birmingham, Alabama, Court of Federal Claims No: 14–0113V
12. Carolyn Mertz, Fullerton, California, Court of Federal Claims No: 14–0114V
13. William Wick, New Martinsville, West Virginia, Court of Federal Claims No: 14–0116V
14. Linda Hutson, Eden, North Carolina, Court of Federal Claims No: 14–0117V
15. Carrin Simmons on behalf of E.S., Jacksonville, Florida, Court of Federal Claims No: 14–0118V
16. Michael Grieshop, Dublin, Ohio, Court of Federal Claims No: 14–0119V
17. Kevin Koen, Hope, Alaska, Court of Federal Claims No: 14–0120V
18. Susan Zalewski, Somers Point, New Jersey, Court of Federal Claims No: 14–0124V
19. Taylor Jenkins, Somers Point, New Jersey, Court of Federal Claims No: 14–0125V
20. Lance Buterbaugh, Woodland Hills, California, Court of Federal Claims No: 14–0127V
21. Debra Passantino, Arlington Heights, Illinois, Court of Federal Claims No: 14–0130V
22. Thomas Craig Self, Madisonville, Tennessee, Court of Federal Claims No: 14–0136V
23. Kenneth H. Barrett and Tammy Barrett on behalf of J.H.B., Deceased, Clyde, North Carolina, Court of Federal Claims No: 14–0137V
24. Paige S. Goodings, Baraboo, Wisconsin, Court of Federal Claims No: 14–0141V
25. Johnny Martin and Anna Martin on behalf of H.D.M., Baraboo, Wisconsin, Court of Federal Claims No: 14–0142V
26. Fay Kennedy, Glenwood Springs, Colorado, Court of Federal Claims No: 14–0144V
27. Maria Kong, New York, New York, Court of Federal Claims No: 14–0145V
28. Vanya Taylor on behalf of Z.T., Joplin, Missouri, Court of Federal Claims No: 14–0146V
29. Elahe Amani, Los Alamitos, California, Court of Federal Claims No: 14–0150V
30. Meghan McSherry, Baraboo, Wisconsin, Court of Federal Claims No: 14–0153V
31. Gene McSherry and Kari McSherry on behalf of Lydia McSherry, Baraboo, Wisconsin, Court of Federal Claims No: 14–0154V
32. Brian N. Goldsworthy, Raleigh, North Carolina, Court of Federal Claims No: 14–0157V
33. Frank Fortunato, Simi Valley, California, Court of Federal Claims No: 14–0158V
34. Kelly Johnson, Simi Valley, California, Court of Federal Claims No: 14–0159V
35. Steven Bayless, Phoenix, Arizona, Court of Federal Claims No: 14–0160V
36. Danise Schwartfigure on behalf of Elijah Schwartfigure, Fort Leonard Wood, Missouri, Court of Federal Claims No: 14–0161V

[FR Doc. 2014–06729 Filed 3–26–14; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 14, 2014.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Pediatric Critical Care and Trauma Scientist Development Program (PCCTSDP).

Date: April 22, 2014.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rita Anand, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Multidisciplinary Approach To Improve Outcomes In Neonatal Craniofacial Defects.

Date: April 28, 2014.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David Weinberg, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, 301–435–6973, *David.Weinberg@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 21, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06739 Filed 3–26–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Council.

Date: May 19, 2014.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: Provide advice to the Director, Center for Scientific Review (CSR), on matters related to planning, execution, conduct, support, review, evaluation, and receipt and referral of grant applications at CSR.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 3091, Bethesda, MD 20892.

Contact Person: Donald L Schneider, Ph.D., Senior Advisor to the Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, MSC 7776, Bethesda, MD 20892, (301) 435–1111, *schneidd@csr.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into NIH buildings. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://public.csr.nih.gov/aboutcsr/CSROrganization/Pages/CSRAC.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 21, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06743 Filed 3–26–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Minority Health and Health Disparities Special Emphasis Panel, April 11, 2014, 2:00 p.m. to April 11, 2014, 5:00 p.m., National Institutes of Health, 6707 Democracy Boulevard, Suite 800, Bethesda, Maryland 20892, which was published in the **Federal Register** on March 19, 2014, 79 FR 15352.

The meeting notice is amended to change the date of the meeting from April 11, 2014 to April 25, 2014. The meeting is closed to the public.

Dated: March 21, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06742 Filed 3–26–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Program Projects: Endocannabinoids Therapeutic Targets.

Date: April 4, 2014.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 21, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06741 Filed 3–26–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, March 24, 2014, 10:00 a.m. to March 24, 2014, 11:00 a.m., National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on March 20, 2014, 79 FR 15596.

The meeting notice is amended to change the date of the meeting from March 24, 2014 to April 10, 2014. The meeting is closed to the public.

Dated: March 21, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06740 Filed 3–26–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0097]

Agency Information Collection Activities: Sworn Statement of Refugee Applying for Admission to the United States, Form G–646; Extension, Without Change, of a Currently Approved Collection

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until May 27, 2014.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0097 in the subject box, the agency name and Docket ID USCIS–2005–0028. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2005–0028;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov*;

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Sworn Statement of Refugee Applying for Admission to the United States.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form G–646; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the data collected through Form G–646 to determine eligibility for the admission of the applicants to the United States as refugees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 20 minutes (.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 24,975 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: March 20, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–06745 Filed 3–26–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0073]

Agency Information Collection Activities: Notice of Detention

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Notice of Detention. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before May 27, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Notice of Detention.

OMB Number: 1651–0073.

Form Number: None.

Abstract: Customs and Border Protection (CBP) may detain merchandise when it has reasonable suspicion that the subject merchandise may be inadmissible but requires more information to make a positive determination. If CBP decides to detain merchandise, a Notice of Detention is sent to the importer or to the importer's broker/agent no later than 5 business days from the date of examination stating that merchandise has been detained, the reason for the detention, and the anticipated length of the detention. The recipient of this notice may respond by providing information to CBP in order to facilitate the determination for admissibility, or may ask for an extension of time to bring the merchandise into compliance. The information provided assists CBP in making a determination whether to seize, deny entry of, or release detained goods into the commerce. Notice of Detention is authorized by 19 U.S.C. 1499 and provided for in 19 CFR 12.123, 151.16, and 133.21.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,350.

Estimated Number of Total Annual Responses: 1,350.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 2,700.

Dated: March 24, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–06810 Filed 3–26–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0037]

Agency Information Collection Activities: Entry of Articles for Exhibition

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Entry of Articles for Exhibition. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before May 27, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the 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 estimates 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 including the use of automated collection techniques or the use of other forms of information

technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Entry of Articles for Exhibition.

OMB Number: 1651–0037.

Form Number: None.

Abstract: Goods entered for exhibit at fairs, or for constructing, installing, or maintaining foreign exhibits at a fair, may be free of duty under 19 U.S.C. 1752. In order to substantiate that goods qualify for duty-free treatment, the consignee of the merchandise must provide information to CBP about the imported goods, which is specified in 19 CFR 147.11(c).

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 50.

Estimated Number of Total Annual Responses: 2,500.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 832.

Dated: March 24, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–06809 Filed 3–26–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–32]

30-Day Notice of Proposed Information Collection: HUD Conditional Commitment/Statement of Appraised Value

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 28, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on November 20, 2013.

A. Overview of Information Collection

Title of Information Collection: HUD Conditional Commitment/Statement of Appraised Value.

OMB Approval Number: 2502–0494.

Type of Request Revision of a currently approved collection.

Form Number: HUD 92800.5b.

Description of the need for the information and proposed use: Lenders must provide to loan applicants either a completed copy of form HUD–92800.5B, or a copy of the completed appraisal report, at or before loan closing. Form HUD 92800.5B serves as the mortgagee's conditional commitment/direct endorsement statement of value of FHA mortgage insurance on the property. The form provides a section for a statement of the property's appraised value and other required FHA disclosures to the homebuyer, including specific conditions that must be met before HUD can endorse a firm commitment for mortgage insurance. HUD uses the information only to determine the eligibility of a property for mortgage insurance.

Respondents: (i.e. affected public): Business.

Estimated Number of Respondents: 1837.

Estimated Number of Responses: 900,000.

Frequency of Response: On occasion.

Average Hours per Response: .12.

Total Estimated Burdens: 108,000.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35

Dated: March 21, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–06726 Filed 3–26–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5696–N–08]

Clarifying Guidance, Waivers, and Alternative Requirements for Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds Under the Disaster Relief Appropriations Act, 2013

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice provides clarifying guidance, waivers, and

alternative requirements for Community Development Block Grant (CDBG) disaster recovery grantees in receipt of funds under the Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2). To date, the Department has allocated $10.6 billion under the Act to assist recovery in the most impacted and distressed areas identified in major disaster declarations due to Hurricane Sandy and other eligible events in calendar years 2011, 2012 and 2013.

DATES: April 1, 2014.

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background
II. Applicable Rules, Statutes, Waivers, and Alternative Requirements
III. Catalog of Federal Domestic Assistance
IV. Finding of No Significant Impact

I. Background

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2, approved January 29, 2013) (Appropriations Act) made available $16 billion in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. As the Appropriations Act requires funds to be awarded directly to a State, or unit of general local government (hereinafter, local government) at the discretion of the Secretary, the term ''grantee'' refers to any jurisdiction that has received a direct award from HUD under the Appropriations Act.

On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG disaster recovery (CDBG–DR) grants under the Appropriations Act to $15.18 billion. To date, a total of $10.6 billion has been allocated for the areas most impacted by Hurricane Sandy and other disasters occurring in 2011, 2012, and 2013. To describe these allocations and the accompanying requirements, the Department published multiple notices (collectively, the ''Prior Notices'') in the **Federal Register**. The requirements of the Prior Notices continue to apply, except as modified by this Notice.

Links to the Prior Notices, the text of the Appropriations Act, and additional guidance prepared by the Department for CDBG–DR grants, are available on HUD's Web site under the Office of Community Planning and Development, Disaster Recovery Assistance: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/drsi.* The same information is also available on HUD's OneCPD Web site: *https://www.onecpd.info/cdbg-dr/.*

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

This Notice clarifies or modifies guidance provided by the Prior Notices. For each waiver and alternative requirement described in this Notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of the Appropriations Act, waivers must be published in the **Federal Register** no later than five days before the effective date of such waiver.

1. Action Plan for Disaster Recovery Waiver and Alternative Requirement—Infrastructure Programs and Projects (Only Applicable to Hurricane Sandy Grantees)

a. *Definition of ''Benefits Multiple Counties''.* The Notice published November 18, 2013, describes additional requirements that apply to major infrastructure projects (see paragraph 2g, under section VI, Applicable Rules, Statutes, Waivers, and Alternative Requirements, at 78 FR 69107). Specifically, the Notice states: ''HUD approval is required for each major infrastructure project with such projects defined as having a total cost of $50 million or more (including at least $10 million of CDBG–DR funds), or benefits multiple counties.'' For purposes of the identifying major infrastructure projects under the November 18, 2013 Notice, HUD defines ''benefits multiple counties'' to mean that a major infrastructure project is physically located in more than one county.

b. *Obligated Public Assistance Grant Program Projects.* Oftentimes, CDBG–DR grantees are awarded recovery funds under FEMA's Public Assistance (PA) Grant Program. Through the PA Program, FEMA provides grant assistance to states, tribal and local governments, and certain types of private nonprofit organizations for: Debris removal; emergency protective measures; and the repair, replacement, or restoration of disaster-damaged, publicly-owned facilities, and the facilities of certain private, nonprofit organizations. The PA Program also encourages protection of these damaged facilities from future events by providing assistance for hazard mitigation measures during the recovery process. The PA Program requires grantees to contribute a non-federal share to a project—typically, 25 percent of the total project cost. For example, if the repair of a public facility costs $1 million, FEMA provides $750,000 while the grantee provides $250,000. However, in the states of New York and New Jersey, due to the amount of damage caused by the storm, FEMA has reduced the non-federal share for Hurricane Sandy PA projects to 10 percent of the project's total cost (FEMA will provide the remaining 90 percent). This reduction is allowed under FEMA regulations.

Per the HCD Act (42 U.S.C. 5305(a)(9)), CDBG funds (including CDBG–DR funds) may be used for the payment of the non-federal share required in connection with a federal grant-in-aid program (e.g., the FEMA PA

Program) that provides funding for a CDBG-eligible activity. Prior to HUD's Notice allocating a second round of funding for grantees in response to Hurricane Sandy (78 FR 69104, published November 18, 2013), many of these grantees had coordinated with FEMA to secure PA funding for critical infrastructure projects. Thus, the infrastructure requirements described in paragraph 2 at 78 FR 69107 will not apply to Hurricane Sandy grantees with PA projects where funds have been obligated by FEMA on or before November 25, 2013. The infrastructure requirements described in paragraph 2 at 78 FR 69107 apply in full to PA projects where funds have been obligated by FEMA after November 25, 2013.

c. *Comprehensive Planning Process Required by Another Federal Agency.* Paragraph 2d, under section VI, Applicable Rules, Statutes, Waivers, and Alternative Requirements (at 78 FR 69107) of the Notice published November 18, 2013, is amended as necessary to allow the following: Where a grantee provides a local match (using CDBG–DR funds) for an infrastructure project that is covered by a comprehensive planning process required by another Federal agency (e.g., FEMA, the Department of Transportation, U.S. Army Corps of Engineers, Environmental Protection Agency, etc.), HUD does not require the grantee to repeat the analysis completed during that planning process as part of its comprehensive risk analysis. Rather, that process may be referenced and/or adopted to assist the grantee in meeting its responsibility to conduct the comprehensive risk analysis required by the November 18, 2013 Notice.

2. Documentation of Low- and Moderate-Income National Objective for Multi-Unit Housing Projects (New York City Only)

Per the HCD Act and the Prior Notices, Hurricane Sandy CDBG–DR grantees may fund the rehabilitation, reconstruction, and new construction of housing. To further address its housing needs, New York City has requested to measure the benefit to low- and moderate-income households, in multi-unit residential projects, in a manner more supportive of mixed income housing. In general, the applicable regulation, 24 CFR 570.208(a)(3), requires at least 51 percent of the units in an assisted multi-unit structure to be occupied by residents that are income eligible. This method of calculating the benefit to low- and moderate-income households is often referred to as the structure basis.

HUD has reviewed other housing assistance programs that measure benefit differently—only those units in a multi-unit structure occupied by income eligible residents are used to calculate the benefit to low- and moderate-income households. Under this ''unit'' approach, when units are alike, the proportion of CDBG funds contributed to the project may be no more than the proportion of units in the project that will be occupied by income-eligible households. For this reason, this approach is sometimes called the proportional units approach. In other words, the rule under the structure approach is that a dollar of CDBG assistance to a structure means that 51 percent of the units must meet income requirements. Under the unit approach, the amount of assistance provided is equal to the cost of units occupied by low- and moderate-income households.

Based on HUD experience, the unit approach can be more compatible with large-scale development of mixed-income housing. For example, in response to the widespread devastation caused by Hurricanes Katrina and Rita, HUD allowed the states of Louisiana and Mississippi to use this approach under their respective CDBG–DR programs. Additionally—(1) the CDBG program rule has a built-in exception that allows limited use of the unit basis for multi-unit non-elderly new construction structures with between 20 and 50 percent low- and moderate income occupancy, (2) in the HOME Investment Partnerships program, HUD's primary housing production program, HUD grantees use funds to pay for the cost of affordable units, and (3) the Neighborhood Stabilization Program permitted grantees to use a unit basis approach to meet the CDBG low- and moderate-income benefit requirement.

After review of the city's Action Plan for Disaster Recovery, and discussions with the city regarding its intent to encourage mixed-income housing development, HUD has determined that it is consistent with the overall purposes of the HCD Act to provide the city the requested additional flexibility in measuring program benefit. Therefore, the waiver and alternative requirements allow the city to measure benefit within a housing development project: (1) According to the existing CDBG requirements, or (2) according to the unit approach described above for multi-unit housing projects involving rehabilitation and/or reconstruction. However, the second option may only be used if the units are generally comparable in size and finishes. The city must select and use one method for each project. For these purposes, the term ''project'' will have the same meaning as in the HOME program at 24 CFR 92.2. The city is reminded that per 2 CFR part 225, CDBG–DR costs must be necessary and reasonable. To meet this requirement, the city must develop policies and procedures to document its costs for housing investments are necessary and reasonable. The city must also meet all civil rights and fair housing requirements.

3. Limited Purpose Modification of Overall Benefit Requirement (City of Minot Only)

The primary objective of the HCD Act is the ''development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.'' 42 U.S.C. 5301(c). To carry out this objective, the statute requires that 70 percent of the aggregate of the grantee's CDBG program's funds be used to support activities benefitting low- and moderate-income persons.

This target can be difficult, if not impossible, for many CDBG–DR grantees to reach as a disaster impacts entire communities—regardless of income. Further, it may prevent grantees from providing assistance to the most damaged areas of need. Therefore, as described by the Prior Notices, the city of Minot, in addition to the other grantees under the Appropriations Act, received a waiver and alternative requirement—only 50 percent of funds must be used for activities that benefit low- and moderate-income persons. Additional flexibility was provided in the March 5, 2013 Notice (78 FR 14329). It allowed a grantee to request to further reduce its overall benefit requirement if it submitted a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 50 percent requirement; and (d) demonstrates that the needs of non-low and moderate-income persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them. Upon HUD's review of the justification, the request can be granted only if the Secretary found a compelling need to reduce the overall benefit below 50 percent.

In response to the above, the city of Minot submitted a justification addressing the required criteria. As described in that letter, the city has received two awards of CDBG–DR funds (appropriated by two separate laws) in response to the severe flooding of the city in the summer of 2011. Early in the recovery process, the city identified housing as the largest unmet need for the low- and moderate-income population. Funding from the first allocation was used to fund housing rehabilitation and reconstruction only for low- and moderate-income households. In addition, the city obligated $2.2 million for infrastructure and acquisition activities to support two affordable rental housing projects (one will create 42 units of workforce housing, the other will result in 40 units of senior housing), and $5.1 million for infrastructure to support home development, as well as to provide pads for mobile homes for low- and moderate-income families. Further, the city is exploring the development of a homeless shelter, and projects to provide 60 affordable rental units for Minot's low- and moderate-income residents through a small rental rehabilitation and reconstruction program. In sum, the city's first appropriation of CDBG–DR funds, under Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011), was $67,575,964; over 52 percent of that allocation is anticipated to benefit low- and moderate-income persons.

As the city moves forward with funding received under a second appropriation law, the Appropriations Act, the focus of the recovery has narrowed to the long-term needs of the city's Flood Inundation Area. This area is four square miles and includes the downtown area and the oldest and most heavily developed portion of the city. It was inundated with two to fifteen feet of water during the 2011 flood and sustained the most severe damage. According to the city, two types of long-term activities, both located within the Flood Inundation Area, are most urgent: Acquisition/buyout of properties and street repair and improvements. In regards to acquisition/buyouts, the city has allocated $14.8 million. These funds will act as a 25 percent match to funding provided by the North Dakota State Water Commission, for a total project cost of over $51 million. Additionally, $9.7 million has been allocated for street repair and improvements. The balance of the city's second allocation, $10.6 million, will be used for reimbursement of home repairs, street repairs in an area located outside the Flood Inundation Area, and planning and administrative costs.

HUD has reviewed the flood inundation data and maps, and the census tract information provided by the city. Of the 14 block groups that comprise the Flood Inundation Area, only four have low- and moderate-income populations of at least 51 percent. An average of the 14 groups demonstrates that the total low- and moderate income population of the Flood Inundation Area is approximately 45.2 percent. According to the HUD FY14 data, the median family income in Ward County, where Minot is located, is $65,700. To be considered a low- and moderate-income household, a family with four persons has an income equal to, or less than, $53,200.

Thus, to enable the city to undertake the activities it has deemed most critical for its recovery, and to ensure that low- and moderate-income households are adequately served and/or assisted, HUD is granting a limited waiver and alternative requirement to reduce the overall benefit from 50 percent to not less than 23 percent. Based on the city's justification, the Secretary has found a compelling need for this reduction due to the unique circumstances related to Minot's request. In particular, HUD notes that the City has already prioritized the needs of low- and moderate-income populations with its first allocation; the low- and moderate-income population in the Flood Inundation Area is close enough to 50 percent that it nearly qualifies under the overall benefit waiver in the March 5, 2013 Notice; given that the Flood Inundation Area is likely to flood again, the City has identified getting people out of harm's way as a top priority and this waiver will allow low- and moderate-income families to take advantage of Minot's program for this purpose; and finally, the waiver will enable the City to leverage non-Federal funds for its buyout program. This is a limited waiver modifying 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to permit the City to use funds appropriated by Public Law 113–2 for flood buyout and street repair programs in the 14 block groups of the Flood Inundation Area with a low- and moderate-income population of approximately 45.2 percent, as described in its Action Plan.

4. Tenant-Based Rental Assistance (Applicable to the State of New York and the City of Joplin)

The State of New York and the city of Joplin have requested a waiver of 42 U.S.C. 5305(a) in order to provide tenant-based rental assistance to households impacted by disasters eligible under the Appropriations Act. After reviewing each grantee's request, HUD is waiving 42 U.S.C. 5305(a), to the extent necessary, to make eligible rental assistance and utility payments paid for up to 2 years on behalf of homeless and at-risk households when such assistance or payments are part of a homeless prevention or rapid rehousing program or activity. Eligible assistance may also include rental (i.e., security) deposits and utility deposits when the grantee determines that such payments are necessary to help prevent a family from being homeless. While existing CDBG regulations may allow payments for these purposes, grantees under the annual CDBG programs are subject to a much shorter time limitation (3 months).

The goal of this waiver is to minimize the time households are homeless by providing re-housing and rental assistance, and by linking the individual or family with services that can help them become stable and self-sufficient. Both grantees' use of CDBG–DR funds for this purpose could measurably advance the Department's priority on supporting forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness. In addition, HUD has previously granted the State of Louisiana a similar waiver for its recovery in response to Hurricanes Katrina and Rita. Further justification for granting the waiver to both grantees, and the specifics of how the waiver will apply to each grantee, are detailed below. Either grantee using these funds in combination with an existing Section 8 Housing Choice Voucher (HCV) program must coordinate with HUD's Office of Public and Indian Housing; however, as this waiver is limited to two years from the effective date of this Notice, grantees are strongly encouraged to ensure households assisted in whole or in part with CDBG–DR funds are transitioned to an alternate source of assistance, if necessary. Unless noted otherwise, the term ''Section 8'' refers to the Section 8 HCV program.

a. *State of New York.* The State of New York anticipates up to $10 million of CDBG–DR funds will be used to support an emergency rehousing program designed to assist households

that are homeless, or in imminent danger of becoming homeless, as result of Hurricane Sandy, Hurricane Irene or Tropical Storm Lee. The State anticipates the funds will be used in conjunction with the State's Social Service Block Grant, which will support an intensive case management system to help locate housing and stabilize the household through a range of services.

Prior to seeking a waiver, the State explored all options available to those most in need of housing assistance. To date, FEMA has approved over $1 billion of assistance to more than 115,000 households located in the State of New York. The State has launched significant housing programs to address rehabilitation and reconstruction, however, these programs are not specifically targeted to address the urgent needs of the homeless—many of whom are still housed in shelters or other non-permanent accommodations as a result of Sandy, Irene and Lee. For example, it is estimated that Long Island's current homeless population in shelters exceeds 2,000; approximately 1,000 of these individuals were forced to the shelter as a result of Sandy. Meanwhile, the Section 8 rental assistance program is experiencing a tremendous demand and has a limited supply of available housing, while HOME resources have been reduced by sequestration. The State is aware of individuals being served by the FEMA Temporary Rental Assistance Program, the Transitional Sheltering Assistance, and the Disaster Housing Assistance Program; however, many of these programs have reached funding limits, or are not eligible sources of assistance for the majority of the homeless.

Thus, for the State of New York, the Department is waiving 42 U.S.C. 5305(a), to the extent necessary, to make eligible tenant-based rental assistance for the homeless population, or those at risk of becoming homeless, due to the effects of Hurricane Sandy, Hurricane Irene, or Tropical Storm Lee. Households will not be eligible for tenant-based rental assistance if they have rejected public housing assistance or declined a Section 8 voucher.

b. *City of Joplin.* As a result of the May 2011 tornado, Joplin's housing stock, including its Section 8 voucher program, was severely impacted. In regards to the Section 8 program, 85 voucher-holders were displaced. Since the tornado, new housing units have gradually been added to Joplin's inventory; however, many of these are more costly as Joplin's rental market evolves. Compounding the issue, during its recovery, the Joplin housing authority experienced a decrease in its ''fundable'' voucher population due to a lack of available units. As a result of this decrease, the voucher budget provided to the city also decreased, despite the needs of additional households that were displaced. Thus, the city seeks the use of CDBG–DR funds to assist Joplin's housing authority restore its program to reach pre-disaster voucher levels. After reviewing the city's request, the Department is waiving 42 U.S.C. 5305(a), to the extent necessary, to make eligible tenant-based rental assistance so that the city may restore its Section 8 program to pre-disaster levels. Households will not be eligible for tenant-based rental assistance if they have rejected public housing assistance, or declined a Section 8 voucher. A maximum of $290,000 may be provided by the city for this use.

Going forward, the city and the housing authority are strongly encouraged to continue to assess the voucher program to ensure households in need will have adequate resources available at the expiration of this waiver.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice is as follows: 14.269.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Date: March 24, 2014.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

[FR Doc. 2014–06850 Filed 3–26–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[145A2100DD–AADD001000.A0E501010.999900]

Indian Education Study Group

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation.

SUMMARY: The Department of the Interior, in conjunction with the U.S. Department of Education (ED), will conduct a series of consultation sessions with Indian tribes to review and provide feedback on the draft actionable recommendations prepared by the American Indian Education Study Group.

DATES: Submit written comments on or before June 2, 2014.

ADDRESSES: Written comments may be submitted to: Jacquelyn Cheek, Special Assistant to the Director, Bureau of Indian Education, 1849 C Street NW., Mail Stop 3609, Washington, DC 20240; telephone (202) 208–6983 or fax (202) 208–3312 or by email to *IAEDTC-CMTS@bia.gov*.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Cheek, Special Assistant to the Director, Bureau of Indian Education, at the above listed address and telephone number.

SUPPLEMENTARY INFORMATION: The Secretaries of the U.S. Department of the Interior (DOI) and the U.S. Department of Education (ED) have convened an American Indian Education Study Group (Study Group) to determine how to effectively fulfill President Obama's vision for Indian Education. The Study Group focused on how to facilitate tribal sovereignty in American Indian education and how to improve educational outcomes for students attending BIE-funded schools. The Study Group previously engaged with tribal leaders and Indian educators in six listening sessions on improving Indian education for BIE to develop draft actionable recommendations.

Based on input from these listening sessions, the Study Group has identified a framework for reform with a goal of high-achieving tribally controlled schools. This goal would allow the schools to deliver methods and practices for every BIE student to meet and exceed high expectations and be well prepared for college, careers, and tribal and global citizenship. The Study Group believes that, in order to reach this goal, the Obama Administration, Congress, and tribes must focus on the following four pillars of reform:

• *Pillar One: Effective Teachers and Principals*—Help tribes identify, recruit, retain and empower diverse, highly effective teachers and principals to maximize student achievement in all tribally controlled schools.

• *Pillar Two: Agile Organizational Environment*—Build a responsive organization with appropriate authority, resources, and services to tribes so they can help their students attain high levels of student achievement.

• *Pillar Three: A Budget That Supports New Capacity Building Mission*—Develop a budget that is aligned to and supports BIE's new mission of tribal capacity building and scaling up best practices.

• *Pillar Four: Comprehensive Supports Through Partnerships*—Foster and cultivate family, community and organizational partnerships to provide the social and emotional supports BIE students need in order to be ready to learn.

The Study Group will hear input from tribal representatives on these pillars of reform and the actionable recommendations at consultation sessions and by written comment. Tribal representatives are invited to discuss other education topics and concerns, as time allows. If a tribal representative cannot attend, we invite you to submit written comments to the contact listed in the **ADDRESSES** section.

The table below provides the date, time, and location for each consultation session:

Date	Time (all times local)	Location
Monday, April 28, 2014	9 a.m. to 5 p.m	Loneman Day School, Oglala, SD.
Wednesday, April 30, 2014	9 a.m. to 5 p.m	Riverside Indian School, Anadarko, OK.
Friday, May 2, 2014	9 a.m. to 5 p.m	Muckleshoot School, Auburn, WA.
Monday, May 5, 2014	9 a.m. to 5 p.m	Gila River Head Start Bldg., Sacaton, AZ.

For additional information on the consultation sessions and the Study Group, please visit: *http://www.bie.edu/NewsEvents/StudyGroup/index.htm*.

Dated: March 21, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–06829 Filed 3–26–14; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV934000.L71220000.JP0000. LVTFFX00080A, MO# 4500063088]

Notice of Temporary Closure on Public Lands in the Gold Butte, Mormon Mesa, and Bunkerville Flats Areas in the Northeastern Portion of Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closure.

SUMMARY: Notice is hereby given that a temporary closure to public access, use, and occupancy will be in effect for the dates and times specified in this Notice on public lands administered by the Bureau of Land Management (BLM), Southern Nevada District Office, Las Vegas Field Office, within the Gold Butte, Mormon Mesa, and Bunkerville Flats Areas in the northeastern portion of Clark County, Nevada. This temporary closure is necessary to limit public access, use, and occupancy during an impoundment of illegally grazing cattle to ensure the safety and welfare of the public, contractors, and government employees. On March 10, 2014, the BLM signed a Decision Record to implement the temporary closure (*see also* Environmental Assessment DOI–BLM–NVS010–2014–0020–EA). The temporary closure decision was approved by the Department of the Interior on March 24, 2014.

DATES: *Effective Dates:* The temporary closure of public lands will be in effect between March 27, 2014 and May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Ryan Chatterton, Project Manager 702–515–5187, *email: mrchatterton@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, seven 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 temporary closure to public access affects public lands in the Gold Butte, Mormon Mesa, and Bunkerville Flats Areas in the northeastern portion of Clark County, Nevada that are managed by the Bureau of Land Management, and are within the legal description as follows:

Mount Diablo Meridian, Nevada

T. 13S., Rs. 67 thru 71E;
T. 14S., Rs. 67 thru 71E;
T. 15S., Rs. 67 thru 71E;
T. 16S., Rs. 67 thru 71E;
T. 17S., R. 67 and Rs. 69 thru 71 E;
T. 18S., R. 67 and Rs. 69 thru 71 E;
T. 19S., R. 67 and Rs. 69 thru 71 E;
T. 20S., Rs. 69 and 70 E.

The area described contains approximately 578,724 acres in Clark County, Nevada.

The temporary closure will not affect all of the above-described lands, but will instead only encompass those public lands necessary to ensure safe operations and only for the period of time necessary to achieve safety objectives.

The impound operation includes the authorized use of low-flying aircraft to herd and capture cattle from various portions of the Gold Butte, Mormon Mesa, and Bunkerville Flats areas. The area is remote with limited vehicular access over steep, rugged terrain. There will be numerous vehicles and support staff conducting operations in this area, as well as movement of feral cattle that pose a threat to public safety. Enforcement of the temporary closure by law enforcement personnel will be limited to those geographic areas determined by Incident Command staff, within the overall closure boundary, that need to be closed based on planned and on-going operations to ensure the safety of the public, Federal employees, and contractor personnel.

It is anticipated the impound operations will last approximately 21 days, but could last up to 30 days depending upon weather, location of cattle, success of capture operations, and other variable conditions. The temporary closure may be rescinded prior to May 12, 2014, if impound operations are successfully completed before that date.

Maps of the affected area and other documents associated with this temporary closure are available at the Southern Nevada District Office, 4701 N. Torrey Pines Drive, Las Vegas, NV

89130 and at the BLM Web site *http://www.blm.gov/nv/st/en/fo/lvfo.html*. This Notice will be posted in the local BLM district office with jurisdiction over the lands to which the order applies (43 CFR 8364.1(b)(5) and 43 CFR 423.12, respectively).

Exceptions: The temporary closures will affect only public lands within the described closure area. Not all public lands within the closure area will be temporarily closed and some closed areas may be reopened during the impound operations if operations have moved to another geographic area. Areas temporarily closed to public access will be posted with signs, barricades, if appropriate, and copies of this temporary closure. Enforcement of the temporary closure by law enforcement personnel will be limited to those geographic areas determined by Incident Command staff, within the overall closure boundary, that need to be closed based on planned and on-going operations to ensure the safety of the public, Federal employees, and contractor personnel.

Two locations are available for members of the public to express their First Amendment rights: I–15 and Exit 112 for Riverside and State Route 170 and White Rock Road. Only one area will be available at a time; Incident Command staff will determine daily which location is most suitable, based on impound operation activities and safety considerations, and will post the location on BLM and National Park Service (NPS) websites.

A media information and interview area will be located at the Intersection of I–15 and Toquap Wash (between mile marker 114 and 115). This location will serve as the primary location for media to conduct in-person interviews during the impoundment operations and temporary closure. Staffed times will be flexible based on media interest and return times of media from observation tours.

Within the closure area, escorted media viewing opportunities will be made available for BLM/NPS credentialed media during the impoundment operation. In order to gain media access during the impound, media representatives must be BLM/NPS credentialed and RSVP by calling 702–515–5226 the day before they wish to observe so guidelines and logistical details may be provided.

Private landholders and holders of valid rights-of-way will be granted access through public lands affected by this temporary closure for the purposes of accessing their private land or right-of-way only.

Penalties: In accordance with Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733 (a)) and 43 CFR 8360.0–7, the BLM will enforce the temporary closures that are put in place on public lands in northeastern Clark County, Nevada.

The following persons are exempt from this temporary closure: Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the BLM.

A person who violates the above order may be cited and tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

(Authority: 43 CFR 8364.1)

Gayle Marrs-Smith,

Las Vegas Field Office Manager, Bureau of Land Management.

[FR Doc. 2014–06826 Filed 3–26–14; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–15232; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 8, 2014. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 11, 2014. 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.

Dated: March 11, 2014.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

San Francisco County

Union Iron Works Historic District, E. of Illinois between 18th & 22nd Sts., San Francisco, 14000150

FLORIDA

Broward County

Pompano Beach Mound, 1232 SE. 13th St., Pompano Beach, 14000151

Polk County

Cypress Gardens, 1 Legoland Way, Winter Haven, 14000152

GEORGIA

Glynn County

United States Post Office and Court House, 805 Gloucester, Brunswick, 14000153

ILLINOIS

Sangamon County

Heimberger House, (Multiple Family Dwellings in Springfield, Illinois MPS) 653–655 W. Vine St., Springfield, 14000154

MASSACHUSETTS

Bristol County

Jewish Cemetery, Old Plainville Rd., New Bedford, 14000155

Swansea Friends Meetinghouse and Cemetery, 223 Prospect St., Somerset, 14000156

Middlesex County

Oliver House, (Wakefield MRA) 58 Oak St., Wakefield, 14000157

Norfolk County

Pondville Cemetery, Everett St., Norfolk, 14000158

MISSOURI

Clay County

Downtown Smithville Historic District, Roughly bounded by Bridge, Church, Commercial & Meadow Sts., Smithville, 14000159

Jackson County

Kemper Arena, 1800 Genessee St., Kansas City, 14000160

Ridenour—Baker Grocery Company Building, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS) 933 Mulberry St., Kansas City, 14000161

Westport Junior High School, (Kansas City, Missouri School District Pre-1970 MPS) 300 E. 39th St., Kansas City, 14000162

SOUTH CAROLINA

Beaufort County

Port Royal School, 1214 Paris Ave., Port Royal, 14000163

Lexington County

Lexington County Courthouse, 139 E. Main St., Lexington, 14000164

WASHINGTON

Clark County

Clark County Courthouse, 1200 Franklin St., Vancouver, 14000165

King County

Nelson—Parker House, 17605 182nd Ave., NE., Woodinville, 14000166

Pierce County

Coffee Pot Restaurant, The, 2101 S. Tacoma Way, Tacoma, 14000167

Whitman County

Star Route and Palouse Street Brick Road, Part of Maple & Palouse Sts., Pullman, 14000168

WISCONSIN

Florence County

Florence Town Hall, 748 Central Ave., Florence, 14000169

A request for removal has been received for the following resources:

WISCONSIN

Kenosha County

Alford Park Warehouse, 1885 Sheridan Rd., Kenosha, 02001665

Walworth County

Phoenix Hall—Wisconsin Institute for the Education of the Deaf and Dumb, 309 W. Walworth St., Delavan, 87000492

[FR Doc. 2014–06753 Filed 3–26–14; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–15161; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 1, 2014. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 11, 2014. 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.

Dated: March 4, 2014.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Contra Costa County

Tassajara One Room School, 1650 Finley Rd., Danville, 14000135

San Diego County

Peterson, Robert O.—Russell Forester House, 567 Gage Ln., San Diego, 14000136

MAINE

Kennebec County

Bond Street Historic District, 8, 9, 12, 18, 21, 22 & 25 Bond St., Augusta, 14000137

Foster—Redington House, 8 Park Place, Waterville, 14000138

Washington County

Union Meeting House, 153 US 1, Whiting, 14000139

MINNESOTA

Ramsey County

Indian Mounds Park Mound Group, (Woodland Tradition in Minnesota MPS) 1075 Mounds Blvd., St. Paul, 14000140

MISSOURI

Jackson County

Commerce Tower, 911 Main St., Kansas City, 14000141

Sweeney Automobile and Tractor School, 215 W. Pershing Rd., Kansas City, 14000142

MONTANA

Fergus County

Judith Landing Historic District (Boundary Increase), Dog Creek Rd., Judith, 14000143

NEW YORK

Monroe County

Miller, Romanta T., House, 1089 Bowerman Rd., Wheatland, 14000144

Niagara County

First Presbyterian Church, 311 1st St., Rainbow Blvd., N., Niagara Falls, 14000145

VIRGINIA

Arlington County

Arlington National Cemetery Historic District, 1 Memorial Ave., Arlington, 14000146

Fauquier County

Paradise, 158 Winchester St., Warrenton, 14000147

Loudoun County

Little River Turnpike Bridge, US 50, Aldie, 14000148

Prince Edward County

Moton, Robert Russa, Boyhood Home, 4162 Lockett Rd., Rice, 14000149

WISCONSIN

Columbia County

Lodi Downtown Historic District, 133, 137–139, 143, 147, 157, and 161–165 S. Main St., Lodi, 08000980

A request for removal has been made for the following resource:

SOUTH DAKOTA

Haakon County

Bank of Midland Building, Main St., Midland, 86001481

[FR Doc. 2014–06752 Filed 3–26–14; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–911]

Certain Lithium Silicate Materials and Products Containing the Same; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 19, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Ivoclar Vivadent AG of Schaan, Liechtenstein; Ivoclar Vivadent, Inc. of Amherst, New York; and Ivoclar Vivadent Manufacturing Inc. of Somerset, New Jersey. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lithium silicate materials and products containing the same by reason of infringement of certain claims of U.S. Patent No. 8,047,021 (''the '021 patent'') and U.S. Patent No. 8,444,756 (''the '756 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being

established as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 21, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain lithium silicate materials and products containing the same by reason of infringement of one or more of claims 1, 2, 5–7, 11–14, and 16–18 of the '021 patent and claims 1, 2, 5–7, 9–11, and 15 of the '756 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Ivoclar Vivadent AG, Bendererstrasse 2, 9494 Schaan, Liechtenstein.

Ivoclar Vivadent, Inc., 175 Pineview Drive, Amherst, NY 14228.

Ivoclar Vivadent Manufacturing Inc., 500 Memorial Drive, Somerset, NJ 08873.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Dentsply International Inc., 221 West Philadelphia Street, York, PA 17405.

Dentsply Prosthetics U.S. LLC, a/k/a Dentsply Ceramco, 570 West College Avenue, York, PA 17401.

DeguDent GmbH, Rodenbacher Chaussee 4, 63457 Hanau-Wolfgang, Germany.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondents.

By order of the Commission.

Issued: March 21, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–06715 Filed 3–26–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research And Production Act of 1993—ASTM International Standards

Notice is hereby given that, on February 27, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between December 2013 and February 2014 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on December 9, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 28, 2014 (79 FR 4493).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–06738 Filed 3–26–14; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Pistoia Alliance, Inc.

Notice is hereby given that, on January 16, 2014, pursuant to Section

6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Biochemfusion ApS, Charlottenlund, DENMARK; BioVariance GmbH, Munich, GERMANY; and The Jackson Laboratory, Bar Harbor, ME, have been added as parties to this venture.

Also, Cognizant Technology Solutions, Docklands, London, UNITED KINGDOM; and Collaborative Drug Discovery, Burlingame, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on October 25, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 3, 2013 (78 FR 72713).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–06744 Filed 3–26–14; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on February 6, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tullow Oil plc, London, UNITED KINGDOM, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on January 2, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 20, 2014 (79 FR 9767).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–06733 Filed 3–26–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; High Density Packaging User Group International, Inc.

Notice is hereby given that, on February 27, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), High Density Packaging User Group International, Inc. (''HDPUG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, IBM, Armonk, NY; Oracle, Redwood City, CA; Indium, Clinton, NY; ITEQ, Taoyuan, TAIWAN; Plexus, Neenah, WI; Philips Medical, Eindhoven, NETHERLANDS; Conpart, Dallas, TX; Alcatel-Lucent, Paris, FRANCE; Clariant, Muttenz, SWITZERLAND; Celestica, Toronto, CANADA; NIST (National Institute of Standards and Technology), Gaithersburg, MD; Arlon, Santa Anna, CA; Isola, Chandler, AZ; Dell, Round Rock, TX; Juniper Networks, Sunnyvale, CA; Shengyi Technologies, Guangdong, PEOPLE'S REPUBLIC OF CHINA; PWB Interconnect, Ottawa, CANADA; Sekisui, Tokyo, JAPAN; Enthone, West Haven, CT; IST, Hsinchu, TAIWAN; Kyzen, Nashville, TN; Ericsson, Kista, SWEDEN; Huawei, Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Senju Metal, Tokyo, JAPAN; Akrometrix, Atlanta, GA; Hitachi Chemical, Tokyo, JAPAN; VIA System/Guangzhou, St. Louis, MO; Nabaltec, Schwandorf, GERMANY; Ciena, Hanover, MD; Meadville, Costa Mesa, CA; Curtis Wright, Charlotte, NC; Elite, Guanyin Township, TAIWAN; Engent, Norcross, GA; Nihon, Osaka, JAPAN; Boeing, Chicago, IL; Rogers, Toronto, CANADA; Flextronics, Singapore, SINGAPORE; Park Electrochemical, Melville, NY; Cisco, San Jose, CA; FCI, Singapore, SINGAPORE; Panasonic, Osaka, JAPAN; Fujitsu, Minato, JAPAN; Polar Instruments, Beaverton, OR; NVIDIA, Santa Clara, CA; Sanmina, San Jose, CA; and Agilent, Santa Clara, CA, have been added as parties to this venture.

Also, Intel Corporation, Santa Clara, CA; ASE Group, Kaoshiung, TAIWAN; and Ventec, Suzhou Jiangsu P.R.C., PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDPUG intends to file additional written notifications disclosing all changes in membership.

On September 14, 1994, HDPUG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15306).

The last notification was filed with the Department on July 3, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2002 (67 FR 56588).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–06734 Filed 3–26–14; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service, Department of Labor.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO). The ACVETEO will discuss Department of Labor's Veterans' Employment and Training Services' (VETS) core programs and new initiatives regarding efforts that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for persons or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Timothy A. Green (202) 693–4723. Time constraints may limit the number of outside participants/presentations. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Wednesday, April 4, 2014 by contacting Mr. Gregory Green (202) 693–4734. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed. The meeting site is accessible to individuals with disabilities. This Notice also describes the functions of the Advisory Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES: *Date and Time:* Thursday, April 10, 2014 beginning at 9 a.m. and ending at approximately 5:00 p.m. (E.S.T.).

ADDRESSES: The meeting will take place at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, Conference Room C–5320. Members of the public are encouraged to arrive early to allow for security clearance into the Frances Perkins Building.

Security Instructions: Meeting participants should use the visitors' entrance to access the Frances Perkins Building, one block north of Constitution Avenue at 3rd and C Streets NW. For security purposes meeting participants must:

1. Present a valid photo ID to receive a visitor badge.
2. Know the name of the event being attending: The meeting event is the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO).
3. Visitor badges are issued by the security officer at the Visitor Entrance located at 3rd and C Streets NW. When receiving a visitor badge, the security officer will retain the visitor's photo ID until the visitor badge is returned to the security desk.
4. Laptops and other electronic devices may be inspected and logged for identification purposes.
5. Due to limited parking options, Metro rail is the easiest way to access the Frances Perkins Building.

Notice of Intent To Attend The Meeting: All meeting participants are being asked to submit a notice of intent to attend by Friday, April 4, 2014, via email to Mr. Timothy Green at *green.timothy.a@dol.gov*, subject line ''April 2014 ACVETEO Meeting.''

FOR FURTHER INFORMATION CONTACT: Mr. Timothy A. Green, Designated Federal Official, Advisory Committee on Veterans' Employment, Training and Employer Outreach, (202) 693–4723.

SUPPLEMENTARY INFORMATION: ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, as amended.

The ACVETEO is responsible for: Assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary of Labor for Veterans' Employment and Training (VETS), with respect to outreach activities and employment and training needs of Veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

9:00 a.m. Welcome and Introductions, Keith Kelly, Assistant Secretary of Labor for Veterans' Employment and Training
9:15 a.m. Administrative Business, Anthony Camilli, Assistant Designated Federal Official
9:30 a.m. Briefing on Ethics while serving as a Special Government Employee on a Federal Advisory Committee, Robert Sadler, Counsel for Ethics
10:30 a.m. Briefing on FY12 Report, Anthony Camilli, Assistant Designated Federal Official
11:00 a.m. Briefing on DOL/VETS Priorities, Teresa Gerton, Deputy Assistant Secretary for Policy, Veterans' Employment and Training Service
12:00 p.m. Lunch
1:00 p.m. Discussion on DOL/VETS Priorities, ACVETEO Chairman
3:00 p.m. Subcommittee Discussion/Assignments, Timothy Green, Designated Federal Official
4:00 p.m. TBD
4:30 p.m. Public Forum, Timothy Green, Designated Federal Official
5:00 p.m. Adjourn

Signed in Washington, DC, this 20th day of March, 2014.

Keith Kelly,

Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2014–06806 Filed 3–26–14; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Petition for Classifying Labor Surplus Areas, extension without revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)] (PRA). The PRA helps ensure that respondents can provide requested data in the desired format with minimal reporting burden (time and financial resources), collection instruments are clearly understood and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the proposed extension of the collection of data contained in the procedures to petition for classification as a Labor Surplus Area (LSA) under exceptional circumstances criteria (currently expires July 31, 2014).

DATES: Submit written comments to the office listed in the addresses section below on or before May 27, 2014.

ADDRESSES: Send written comments to Samuel Wright, Office of Workforce Investment, Room C–4514, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: (202) 693–2870 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3015. Email: *wright.samuel.e@dol.gov*. To obtain a copy of the proposed information collection request (ICR), please contact the person listed above.

SUPPLEMENTARY INFORMATION:

I. Background

Under Executive Orders 12073 and 10582, and 20 CFR parts 651 and 654, the Secretary of Labor is required to classify LSAs and disseminate this information for the use of all Federal agencies. This information is used by Federal agencies for various purposes including procurement decisions, food stamp waiver decisions, certain small business loan decisions, as well as other purposes determined by the agencies. The LSA list is issued annually, effective October 1 of each year, utilizing data from the Bureau of Labor Statistics. Areas meeting the criteria are classified as LSAs.

Department regulations specify that the Department can add other areas to the annual LSA listing under the exceptional circumstance criteria. Such additions are based on information contained in petitions submitted by the state workforce agencies (SWAs) to ETA's national office. These petitions contain specific economic information about an area to provide ample justification for adding the area to the LSA listing under the exceptional circumstances criteria. The petitions submitted by the SWAs concern various aspects of unemployment and the economic condition for a specific area in order to provide justification for adding the area to the LSA list under the exceptional circumstances criteria. Under these criteria, an area may be determined eligible for classification as a LSA if it is experiencing a high rate of unemployment which is not temporary or seasonal and which was not adequately reflected in the unemployment data for the two-year reference period. Instructions designed to assist SWAs in the preparation of such petitions are currently contained on the ETA Web site: *http://www.doleta.gov/programs/lsa.cfm.*

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without revisions.

Title: Petition for Classifying Labor Surplus Areas.

OMB Number: 1205–0207.

Affected Public: State Workforce Agencies.

Estimated Total Annual Respondents: 3.

Estimated Total Annual Responses: 3.

Estimated Total Annual Burden Hours: 9.

Total Estimated Annual Other Costs Burden: 0.

We will summarize and/or include in the request for OMB approval of the ICR, the comments received in response to this comment request; they will also become a matter of public record.

Eric M. Seleznow,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2014–06750 Filed 3–26–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Lower Living Standard Income Level (LLSIL)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: Title I of WIA (Pub. L. 105–220) requires the U.S. Secretary of Labor (Secretary) to update and publish the LLSIL tables annually, for uses described in the law (including determining eligibility for youth programs). WIA defines ''low income individual'' to include individuals who received income during a six-month period that does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2014, and also provides a reference to the 2014 Health and Human Services ''Poverty Guidelines.''

DATES: This notice is effective immediately.

For Further Information or Questions on the LLSIL: Please contact Samuel Wright, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C–4526, Washington, DC 20210; Telephone: 202–693–2870; Fax: 202–693–3015 (neither telephone or fax are toll-free numbers); Email address: *wright.samuel.e@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via Text Telephone (TTY/TDD) by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

For Further Information or Questions on Federal Youth Employment Programs: Please contact Jennifer Kemp, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N–4464, Washington, DC 20210; Telephone: 202–693–3377; Fax: 202–693–3110 (neither telephone or fax are toll-free numbers); Email: *kemp.jennifer.n@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The purpose of WIA is to provide employment assistance through statewide and local workforce investment programs that increase the employment opportunities, retention, and earnings of participants. WIA programs are intended to increase the occupational skills of participants and the quality of the workforce, thereby reducing welfare dependency and enhancing the productivity and competitiveness of the Nation's workforce.

LLSIL is used for several purposes under WIA. WIA Section 101(25) defines the term ''low income individual'' for eligibility purposes, and Sections 127(b)(2)(C) and

132(b)(1)(B)(v)(IV) define ''disadvantaged youth'' and ''disadvantaged adult'' in terms of the poverty line or LLSIL for State formula allotments. The governor and State/local workforce investment boards (WIBs) use the LLSIL for determining eligibility for youth and adults for certain services. ETA encourages governors and State/local WIBs to consult the WIA regulations and the preamble to the WIA Final Rule (65 FR 49294, August 11, 2000) for more specific guidance in applying the LLSIL to program requirements. The U.S. Department of Health and Human Services (HHS) published the 2014 poverty-level guidelines in the **Federal Register** on January 22, 2014 (Volume 79, Number 14), pp. 3593–3594 (available at *http://aspe.hhs.gov/poverty/14poverty.cfm*). ETA provides a hyperlink to the 2014 LLSIL **Federal Register** and updated LLSIL tables on its Web site at *http://www.doleta.gov/llsil/2014/.*

WIA Section 101(24) defines LLSIL as ''that income level (adjusted for regional, metropolitan, urban and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent lower living family budget issued by the Secretary.'' The Secretary issued the most recent lower living family budget in fall 1981. The four-person urban family budget estimates, previously published by the U.S. Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently, BLS provides data which ETA uses to develop the LLSIL tables, shown in the Appendices to this **Federal Register** notice.

ETA published the 2013 updates to the LLSIL in the **Federal Register** of March 19, 2013, at Vol. 78, No. 53, pp. 16871–16875. This notice updates the LLSIL to reflect cost-of-living increases for 2014, by calculating the percentage change in the most recent 2013 Consumer Price Index for All Urban Consumers (CPI–U) for an area, and applying this calculation to each of the March 19, 2013 LLSIL figures. The updated figures for a four-person family are listed in Appendix A, Table 1 by region for both metropolitan and non-metropolitan areas. Numbers in all Appendix tables are rounded up to the nearest dollar. Since program eligibility for low-income individuals, ''disadvantaged adults'' and ''disadvantaged youth'' may be determined by family income at 70 percent of the LLSIL, pursuant to WIA Sections 101(25), 127(b)(2)(C), and 132(b)(1)(B)(v)(IV), respectively, those figures are listed as well.

I. Jurisdictions

Jurisdictions included in the various regions, based generally on the Census Regions defined by the U.S. Department of Commerce, are as follows:

A. Northeast

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

B. Midwest

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

C. South

Alabama
American Samoa
Arkansas
Delaware
District of Columbia
Florida
Georgia
Northern Marianas
Oklahoma
Palau
Puerto Rico
South Carolina
Kentucky
Louisiana
Marshall Islands
Maryland
Micronesia
Mississippi
North Carolina
Tennessee
Texas
Virginia
West Virginia

D. West

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Appendix B, Table 2.

For Alaska, Hawaii, and Guam, the year 2014 figures were updated from the 2013 Regional indexes provided by BLS. Data on 23 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on annual and semiannual CPI–U changes for a 12-month period ending in December 2013. The updated LLSIL figures for these MSAs and 70 percent of LLSIL are reported in Appendix C, Table 3.

Appendix D, Table 4 lists each of the various figures at 70 percent of the updated 2013 LLSIL for family sizes of one to six persons. Tables 1–3 only list the LLSIL for a family of four, but Table 4 can be used to separately determine the LLSIL for family incomes between one and six persons. For families larger than six persons, add the income level difference between the six-person and the five-person family income levels for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding 70 percent of the LLSIL figure, the figure is italicized.

Appendix E, Table 5, shows 100 percent of the LLSIL for family sizes of one to six, and is used to determine self-sufficiency as noted at 20 CFR 663.230 of WIA regulation, and Section 134(d)(3)(A)(ii) of WIA. Modified Microsoft Excel tables for both Appendix E, Table 5 (with the area names) and Appendix D, Table 4, with the area names, and the shaded areas where the poverty level is greater than the corresponding 70 percent of the LLSIL figure, is available on the ETA LLSIL Web site at *http://www.doleta.gov/llsil/2014/.*

II. Use of These Data

Governors should designate the appropriate LLSILs for use within the State from Appendices A, B, or C, containing Tables 1 through 3. Appendices D and E, contain Tables 4 and 5, which adjust a family of four figure for larger and smaller families, may be used with any LLSIL designated area. The governor's designation may be provided by disseminating information on MSAs and metropolitan and non-metropolitan areas within the State or it may involve further calculations. For example, the State of New Jersey has at least four LLSIL figures (Northeast metropolitan area, Northeast non-metropolitan area, and the New York and Philadelphia MSAs). An area may have more than one LLSIL area

designation, if a workforce investment area has more than one LLSIL area designation, the governor may determine which is to be used.

Under 20 CFR 661.110, a State's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with WIA and WIA regulations.

III. Disclaimer on Statistical Uses

Publication of the LLSIL is solely for WIA statutory and regulatory requirements. BLS has terminated the four-person urban family budget estimates series and has not revised the lower living family budget since 1981, and has no plans to do so. The CPI–U adjustments used to update LLSIL for this publication are not precisely comparable, (most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U). Thus, figures in this notice should not be used for any statistical purposes, and are valid only for those purposes under WIA as defined in the law and regulations.

Appendix A

TABLE 1—LOWER LIVING STANDARD INCOME LEVEL [1] (FOR A FAMILY OF FOUR PERSONS) BY REGION

Region [2]	2014 Adjusted LLSIL	70 percent LLSIL
Northeast:		
Metro	$41,787	$29,251
Non-Metro [3]	41,374	28,962
Midwest:		
Metro	36,720	25,704
Non-Metro	35,711	24,998
South:		
Metro	38,293	26,805
Non-Metro	35,077	24,554
West:		
Metro	42,378	29,665
Non-Metro [4]	41,849	29,294

[1] For ease of use, these figures are rounded to the next highest dollar.

[2] Metropolitan area measures were calculated from the weighted average CPI-U's for city size classes A and B/C. Non-metropolitan area measures were calculated from the CPI-U's for city size class D.

[3] Non-metropolitan area percent changes for the Northeast region are no longer available. The Non-metropolitan percent change was calculated using the U.S. average CPI-U for city size class D.

[4] Non-metropolitan area percent changes for the West region are based on unpublished BLS data.

Appendix B

TABLE 2—LOWER LIVING STANDARD INCOME LEVEL [1] (FOR A FAMILY OF FOUR PERSONS), FOR ALASKA, HAWAII AND GUAM

Region [2]	2014 Adjusted LLSIL	70 Percent LLSIL
Alaska:		
Metro	$47,851	$33,496
Non-Metro	50,100	35,070
Hawaii, Guam:		
Metro	51,552	36,086
Non-Metro	53,485	37,440

[1] For ease of use, these figures are rounded to the next highest dollar.

[2] Non-Metropolitan percent changes for Alaska, Hawaii and Guam were calculated from the CPI-U's for all urban consumers for city size class D in the Western Region. Generally the non-metro areas LLSIL is lower than the LLSIL in metro areas. This year the non-metro area LLSIL incomes were larger because the change in CPI-U was smaller in the metro areas compared to the change in CPI-U in the non-metro areas of Alaska, Hawaii and Guam.

Appendix C

TABLE 3—LOWER LIVING STANDARD INCOME LEVEL [1] (FOR A FAMILY OF FOUR PERSONS), FOR 23 SELECTED MSAS

Metropolitan statistical areas (MSAs)	2014 Adjusted LLSIL	70 Percent LLSIL
Anchorage, AK	$49,048	$34,333
Atlanta, GA	33,801	23,660
Boston-Brockton-Nashua, MA/NH/ME/CT	44,629	31,241
Chicago-Gary-Kenosha, IL/IN/WI	37,829	26,481
Cincinnati-Hamilton, OH/KY/IN	35,824	25,077
Cleveland-Akron, OH	37,425	26,198
Dallas-Ft. Worth, TX	34,005	23,804
Denver-Boulder-Greeley, CO	37,771	26,440
Detroit-Ann Arbor-Flint, MI	35,239	24,668
Honolulu, HI	52,479	36,735
Houston-Galveston-Brazoria, TX	33,265	23,285
Kansas City, MO/KS	34,638	24,247
Los Angeles-Riverside-Orange County, CA	42,151	29,506
Milwaukee-Racine, WI	36,055	25,238
Minneapolis-St. Paul, MN/WI	36,142	25,300
New York-Northern NJ-Long Island, NY/NJ/CT/PA	44,387	31,071
Philadelphia-Wilmington-Atlantic City, PA/NJ/DE/MD	40,170	28,119
Pittsburgh, PA	43,968	30,778
St. Louis, MO/IL	34,011	23,808
San Diego, CA	45,635	31,945
San Francisco-Oakland-San Jose, CA	43,714	30,600
Seattle-Tacoma-Bremerton, WA	44,351	31,046
Washington-Baltimore, DC/MD/VA/WV [2]	45,279	31,695

[1] For ease of use, these figures are rounded to the next highest dollar.

[2] Baltimore and Washington are calculated as a single metropolitan statistical area.

Appendix D

Table 4: 70 Percent of Updated 2014 Lower Living Standard Income Level (LLSIL), by Family Size

To use the 70 percent LLSIL value, where it is stipulated for the WIA programs, begin by locating the region or metropolitan area where the program applicant resides. These are listed in Tables 1, 2 and 3. After locating the appropriate region or metropolitan statistical area, find the 70 percent LLSIL amount for that location. The 70 percent LLSIL figures are listed in the last column to the right on each of the three tables. These figures apply to a family of four. Larger and smaller family eligibility is based on a percentage of the family of four. To determine eligibility for other size families consult Table 4 and the instructions below.

To use Table 4, locate the 70 percent LLSIL value that applies to the individual's region or metropolitan area from Tables 1, 2 or 3. Find the same number in the ''family of four'' column of Table 4. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the maximum household income the individual is permitted in order to qualify as economically disadvantaged under the WIA.

Where the HHS poverty level for a particular family size is greater than the corresponding LLSIL figure, the LLSIL figure is italicized. Individuals from these family sizes may consult the 2014 HHS poverty guidelines found on the Health and Human Services Web site at *http://aspe.hhs.gov/poverty/14poverty.cfm* to find the higher eligibility standard. Individuals from Alaska and Hawaii should consult the HHS guidelines for the generally higher poverty levels that apply in their States.

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
$8,390	*$13,745*	*$18,865*	*$23,285*	*$27,481*	$32,138
8,519	*13,962*	*19,172*	*23,660*	27,923	32,653
8,574	*14,051*	*19,286*	*23,804*	28,095	32,853
8,577	*14,052*	*19,288*	*23,808*	28,097	32,856
8,729	*14,308*	*19,646*	24,247	28,614	33,465
8,846	*14,492*	19,890	24,554	28,976	33,886
8,883	*14,554*	19,984	24,668	29,109	34,040
9,006	*14,752*	20,252	24,998	29,505	34,504
9,030	*14,801*	20,318	25,077	29,595	34,609
9,086	*14,893*	20,446	25,238	29,785	34,832
9,111	*14,931*	20,498	25,300	29,860	34,919
9,254	*15,170*	20,821	25,704	30,332	35,479
9,433	*15,464*	21,223	26,198	30,918	36,154
9,523	*15,605*	21,422	26,440	31,201	36,491
9,533	*15,630*	21,449	26,481	31,252	36,551
9,654	15,819	21,712	26,805	31,637	37,001
10,129	16,594	22,780	28,119	33,187	38,807
10,428	17,094	23,466	28,962	34,181	39,967
10,534	17,265	23,695	29,251	34,522	40,369
10,548	17,286	23,733	29,294	34,573	40,435
10,623	17,408	23,901	29,506	34,818	40,724
10,680	17,502	24,030	29,665	35,005	40,943
11,022	18,060	24,787	30,600	36,111	42,234
11,086	18,166	24,936	30,778	36,324	42,478
11,184	18,319	25,151	31,046	36,638	42,846
11,187	18,336	25,168	31,071	36,664	42,885
11,249	18,435	25,312	31,241	36,869	43,114
11,415	18,707	25,677	31,695	37,407	43,748
11,506	18,849	25,880	31,945	37,699	44,090
12,064	19,764	27,137	33,496	39,529	46,232
12,366	20,264	27,814	34,333	40,520	47,381
12,631	20,692	28,410	35,070	41,385	48,396
12,998	21,293	29,236	36,086	42,585	49,806
13,230	21,675	29,756	36,735	43,349	50,702
13,483	22,095	30,329	37,440	44,181	51,669

Appendix E

Table 5: Updated 2014 LLSIL (100 percent), by Family Size

To use the LLSIL to determine the minimum level for establishing self-sufficiency criteria at the State or local level, begin by locating the metropolitan area or region from Table 1, 2 or 3 and then find the 2014 adjusted LLSIL amount for that location. These figures apply to a family of four. Locate the corresponding number in the family of four in the column below. Move left or right across that row to the individual's family unit. That figure is the minimum figure that States must set for determining whether employment leads to self-sufficiency under WIA programs.

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
$11,985	$19,635	$26,949	$33,265	$39,258	$45,911
12,170	19,945	27,389	33,801	39,890	46,647
12,249	20,073	27,552	34,005	40,136	46,933
12,253	20,074	27,555	34,011	40,139	46,937
12,470	20,440	28,065	34,638	40,878	47,807
12,637	20,703	28,415	35,077	41,394	48,409
12,691	20,792	28,549	35,239	41,585	48,629
12,866	21,074	28,931	35,711	42,150	49,291
12,900	21,144	29,026	35,824	42,278	49,442
12,980	21,275	29,208	36,055	42,550	49,760
13,016	21,329	29,283	36,142	42,657	49,885

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
13,221	21,671	29,745	36,720	43,331	50,684
13,476	22,091	30,318	37,425	44,169	51,648
13,604	22,292	30,603	37,771	44,572	52,130
13,619	22,328	30,641	37,829	44,646	52,215
13,792	22,598	31,017	38,293	45,196	52,858
14,469	23,706	32,542	40,170	47,411	55,439
14,898	24,420	33,523	41,374	48,830	57,096
15,049	24,664	33,850	41,787	49,317	57,670
15,068	24,694	33,905	41,849	49,390	57,764
15,176	24,869	34,144	42,151	49,740	58,177
15,258	25,003	34,329	42,378	50,008	58,490
15,745	25,800	35,410	43,714	51,588	60,335
15,836	25,951	35,622	43,968	51,891	60,683
15,976	26,170	35,930	44,351	52,340	61,208
15,982	26,195	35,955	44,387	52,377	61,265
16,070	26,336	36,160	44,629	52,670	61,591
16,307	26,724	36,682	45,279	53,439	62,497
16,438	26,927	36,971	45,635	53,855	62,986
17,235	28,235	38,767	47,851	56,470	66,046
17,666	28,949	39,734	49,048	57,886	67,688
18,044	29,560	40,585	50,100	59,121	69,138
18,569	30,419	41,765	51,552	60,836	71,152
18,900	30,965	42,508	52,479	61,928	72,431
19,261	31,564	43,327	53,485	63,116	73,813

Eric Seleznow,

Acting Assistant Secretary for Employment and Training Administration.

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BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0012]

Revision of OSHA's Policy for Incorporating New Test Standards Into the List of Appropriate NRTL Program Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of final decision.

SUMMARY: In this notice, OSHA revises its existing policies regarding the incorporation of new test standards into the Nationally Recognized Testing Laboratory (NRTL) Program's list of appropriate test standards and into NRTLs' scopes of recognition; and incorporates 72 test standards into the NRTL Program's list of appropriate test standards.

DATES: The actions contained in this notice will become effective on March 27, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov*.

General and technical information: Contact Mr. David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone (202) 693–2110; email: *johnson.david.w@dol.gov.*

*Copies of this **Federal Register** notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This **Federal Register** notice, as well as other relevant information, is also available on OSHA's Web page at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognizes organizations that provide product-safety testing and certification services to manufacturers. These organizations perform testing and certification, for purposes of the NRTL Program, to U.S. consensus-based product-safety test standards. OSHA does not develop or issue these test standards, but generally relies on U.S. standards-development organizations (SDOs) accredited by the American National Standards Institute (ANSI). The products covered by the NRTL Program consist of those items for which OSHA safety standards require ''certification'' by an NRTL. The requirements affect electrical products and 38 other types of products.

OSHA recognition of an organization as an NRTL signifies that the organization meets the legal requirements in OSHA regulations at 29 CFR 1910.7 and the NRTL Program policies in CPL 1–0.3, ''NRTL Program Policies, Procedures, and Guidelines,'' December 2, 1999 (''Directive''). Recognition is an acknowledgement by OSHA that the NRTL has the capabilities to perform independent safety testing and certification of the specific products covered within the NRTL's scope of recognition. Recognition of an NRTL by OSHA also allows employers to use products certified by that NRTL to meet those OSHA standards that require product testing and certification (29 CFR 1910.7(a)).

An NRTL's scope of recognition consists, in part, of specific test standard(s) approved by OSHA for use by the NRTL. Pursuant to OSHA regulations, the NRTL must first request to have a test standard included in its scope of recognition. OSHA will grant the NRTL's request only if the NRTL has the capability to test and examine equipment [1] and materials for workplace safety purposes and to determine conformance with the test standard for each relevant item of equipment or material that it lists, labels, or accepts (29 CFR 1910.7(b)(1)). Capability includes proper testing equipment and facilities, trained staff, written testing procedures, calibration programs, and quality-control programs. An

[1] In this notice, OSHA uses the terms ''equipment'' and ''product'' or ''products'' interchangeably.

organization's recognition as an NRTL is, therefore, not for products, but for appropriate test standards covering a type of product(s) (29 CFR 1910.7(b)(1)).

For OSHA to consider a test standard appropriate, the test standard must be current and specify the safety requirements for a specific type of product(s) (29 CFR 1910.7(c)). A test standard withdrawn by an SDO is no longer considered an appropriate test standard (Directive, App. C.XIV.B). It is OSHA's policy to remove acceptance of withdrawn test standards by issuing a correction notice in the **Federal Register** for all NRTLs recognized for the withdrawn test standards. However, OSHA will recognize an NRTL for an appropriate replacement test standard if the NRTL has the requisite testing and evaluation capability for implementing the replacement test standard.

One method that NRTLs may use to show such capability involves an analysis to determine whether any testing and evaluation requirements of existing test standards in an NRTL's scope are comparable (i.e., are completely or substantially identical) to the requirements in the replacement test standard. If OSHA's analysis shows the replacement test standard does not require additional or different technical capability than an existing test standard, the replacement test standard is comparable to the existing test standard, and OSHA can add the replacement test standard to affected NRTLs' scopes of recognition.

If OSHA's analysis shows the replacement test standard requires an additional or different technical capability than any existing test standard, then the replacement test standard is not comparable to any existing test standard. In such cases (i.e., when test standards are not comparable), each affected NRTL that seeks to have OSHA add the replacement test standard to the NRTL's scope of recognition must provide information to OSHA that demonstrates its testing and evaluation capability to implement that standard.

In a November 25, 2013, **Federal Register** notice (78 FR 70349), OSHA proposed: (1) Revising its existing policies regarding the incorporation of new test standards into the NRTL Program's list of appropriate test standards and into NRTLs' scopes of recognition; and (2) incorporating new test standards into the NRTL Program's list of appropriate test standards. The comment period for the public to submit comments on these proposed actions ended on December 26, 2013.

OSHA received four comments filed in a timely manner (OSHA–2013–0012–0006, OSHA–2013–0012–0007, OSHA–2013–0012–0008, OSHA–2013–0012–0009), and one comment filed after the comment period closed (OSHA–2013–0012–0010), on its proposal. All comments are available for viewing at *www.regulations.gov* under docket number OSHA–2013–0012. In this final-decision notice, OSHA addresses these comments and adopts its proposal with limited revision that reflects some commenters' concerns. OSHA describes the proposal, comments, and its final decision in more detail below.

II. Final Decision Revising Existing OSHA Policy

A. Revision to Existing Policy for Incorporating New Test Standards Into the NRTL Program's List of Appropriate Test Standards

In the November 25, 2013 **Federal Register** notice, OSHA proposed revising its existing policy regarding the incorporation of new test standards into the NRTL Program's list of appropriate test standards. Pursuant to OSHA's existing policy, OSHA incorporates test standards into the list of appropriate test standards only when OSHA processes an NRTL's application for recognition (either initial or expansion), or when OSHA incorporates into an NRTL's scope of recognition a comparable replacement test standard for a withdrawn test standard (Directive, Chapter 2; App. C.XIV.B). OSHA believes that the existing policy delays the acceptance process for valid test standards, and proposed revising the existing policy to expedite incorporation of new test standards into the NRTL Program's list of appropriate test standards and into NRTLs' scopes of recognition.

OSHA becomes aware of new test standards through various avenues. For example, OSHA becomes aware of new test standards by: (1) Monitoring notifications issued by certain SDOs; (2) reviewing applications by NRTLs or applicants seeking recognition to include a new test standard in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, other government agencies, or other parties that a new test standard may be appropriate to add to its list of appropriate standards. Accordingly, OSHA proposed to expand the existing process whereby it incorporates new test standards into the NRTL Program's list of appropriate test standards. Under the proposed policy, OSHA would not only include new test standards in its list of appropriate test standards under the conditions described by its existing policy, but would include new test standards in the list when OSHA determined that such test standards are appropriate to add to the list. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers, covers a type of product that no standard previously covered, or be otherwise new to the NRTL Program.

Under the proposed policy, OSHA first would make a preliminary determination that the new test standard is appropriate under the NRTL Program regulations (29 CFR 1910.7(c)). The Agency then would periodically issue a **Federal Register** notice proposing to include new test standards that it identifies as appropriate in its list of appropriate test standards. When an SDO withdraws test standards, OSHA also may propose in a **Federal Register** notice that new test standards replace withdrawn test standards in NRTLs' scopes of recognition. After OSHA publishes the preliminary determination in a **Federal Register** notice, it would give the public an opportunity to comment and, after reviewing these comments and other record evidence, would issue, in the **Federal Register**, a final determination.

No commenter objected to this proposed policy revision. The National Electrical Manufacturers Association (NEMA) and Underwriters Laboratories, Inc. (UL), expressed support for the proposed policy (OSHA–2013–0012–0008, OSHA–2013–0012–0009). Therefore, OSHA hereby revises the policy, as proposed.

NEMA asked that OSHA include the effective dates of test standards in its list of appropriate test standards (OSHA–2013–0012–0008). In explaining this comment, NEMA asserted that manufacturers and NRTLs use the time between the publication and effective dates of a test standard to become informed of the new requirements. While this might be the case, OSHA currently does not evaluate test standards with future effective dates for use in the NRTL Program. OSHA accepts a test standard as appropriate only after the effective date of the standard.

NEMA stated further that, in determining whether a test standard is appropriate, OSHA should ''continue to rely primarily on U.S. standards developers accredited by the American National Standards Institute (ANSI),'' which ''provides reasonable assurance that the standard is a good standard and likely to have wide use;''. NEMA then stated that OSHA ''should only consider standards developed by organizations

considered to be primary sources that are known to produce universally acceptable standards representing good design.''

OSHA considers the appropriateness of test standards on a case-by-case basis. OSHA notes, however, that the NRTL Program regulation constrains its discretion in this area; this regulation requires that, for OSHA to accept a test standard, the test standard must, at a minimum, ''provide an adequate level of safety'' (29 CFR 1910.7(d)). Also pursuant to the regulation, OSHA generally accepts test standards developed by SDOs accredited by ANSI (29 CFR 1910.7(c)). ANSI accreditation ensures that the SDO meets the criteria required in the regulation for OSHA to consider a test standard appropriate.[2]

B. Revision to Policy for Expanding NRTLs' Scopes of Recognition

Under existing OSHA policy, an NRTL must apply for an expansion of recognition, pursuant to the procedures in 29 CFR 1910.7, App. A, if the NRTL wants OSHA to incorporate into its scope of recognition a replacement test standard that is not comparable to a test standard that OSHA is removing from that NRTL's scope of recognition because, for example, an SDO withdrew the predecessor test standard. In the November 25, 2013, **Federal Register** notice, OSHA proposed modifying this policy to provide for an abbreviated recognition process that allows NRTLs currently recognized for the predecessor standard to submit to OSHA, in lieu of an application for expansion, only information that demonstrates that the NRTL has the capability to perform the testing and evaluation required in the areas of the replacement test standard that are not equivalent or comparable to the standard being replaced.

Therefore, under the new policy, when OSHA becomes aware of a replacement test standard that is not comparable to a test standard that OSHA is removing from an NRTL's scope of recognition, OSHA would invite that NRTL, via email or letter, to submit specified information that OSHA believes demonstrates the requisite testing and evaluation capability. OSHA would include, in the letter or email, a comparability table for the replacement test standard that details proposed substantive differences between the existing and replacement test standards that OSHA believes the NRTL must address for OSHA to recognize the NRTL for the replacement standard. OSHA would follow the procedures specified by 29 CFR 1910.7, App. A, in determining whether it should incorporate the replacement test standard into the affected NRTL's scope of recognition. OSHA then would issue a preliminary determination in the **Federal Register**, provide the public an opportunity to comment on the preliminary determination, and, after reviewing the comments and other record evidence, issue a final determination in the **Federal Register** on whether it will incorporate the replacement test standard into the affected NRTL's scope of recognition. In making a preliminary or final determination, OSHA also would follow other applicable procedures specified by 29 CFR 1910.7, App. A, such as requesting additional information, conducting appropriate on-site reviews, or initiating special reviews. OSHA believes the proposed policy would expedite the recognition process of replacement test standards issued by SDOs.

No commenter objected to the proposed policy revision. UL expressed support for the proposed revision (OSHA–2013–0012–0009). In its comments, UL asked that OSHA further revise its policy to allow the use of the proposed abbreviated recognition process for new test standards that have no relation to predecessor test standards currently in an NRTL's scope of recognition (as opposed to replacement test standards that would replace predecessor test standards that OSHA is removing from the NRTL's scope of recognition). UL revised the language in the proposed policy, in part, as follows:

> [W]hen an NRTL seeks the addition of a new standard to its current scope of recognition, the NRTL may submit specified information that demonstrates it has the requisite testing and evaluation capability based on standards in its current scope of recognition. The specified information would include reference to existing standards in the NRTL's scope that require the capabilities needed for the new standard. If necessary, the NRTL would also identify substantive differences in needed capability between the new standard and existing test standards in its scope of recognition. The NRTL would provide information about its capabilities for those substantive differences based on the current OSHA NRTL application for scope expansion.

(Id.) According to UL, OSHA should require the application process specified by 29 CFR 1910.7, App. A, only ''[f]or the rare situations where an NRTL wishes to expand into new standards where it has little or none of the needed capabilities'' (id.).

OSHA is not adopting UL's revised language. Accordingly, the key aspects of OSHA's new policy are that OSHA can now initiate the recognition process when it becomes aware of a replacement test standard that is not comparable to a test standard that it is removing from an NRTL's scope of recognition, and OSHA will inform the NRTL, in the first instance, of substantive differences between the existing and replacement test standards that OSHA believes the NRTL must address for OSHA to recognize the NRTL for the replacement standard. Under UL's revised language, the NRTL, not OSHA, would initiate the recognition process, and the NRTL, not OSHA, would inform OSHA of its capability to perform the test standard.

UL's revised language would not, therefore, significantly expedite the recognition process for new test standards because UL's revised language is substantially similar to the existing application process. Neither OSHA's new policy, nor UL's revised language, would permit the NRTL to avoid key procedural requirements of the application process. Indeed, UL agrees, stating in its revised language that ''OSHA would follow the procedures specified by 29 CFR 1910.7, App. A, in determining whether it should incorporate the new test standard into the NRTL's scope of recognition'' (id.). UL stated further in its revised language, similar to what OSHA states in its new policy, that ''OSHA would issue a preliminary determination in the **Federal Register**, provide the public an opportunity to comment on the preliminary determination, and, after reviewing the comments and other record evidence, issue a final determination in the **Federal Register** on whether it will incorporate the new test standard into the affected NRTL's scope of recognition,'' and ''in making a preliminary or final determination, OSHA also would follow other applicable procedures specified by 29 CFR 1910.7, App. A, such as requesting additional information, conducting appropriate on-site reviews, or initiating special reviews'' (id.).

[2] The NRTL Program regulation provides that an ''appropriate test standard'' is ''a document which specifies the safety requirements for specific equipment or class of equipment and is: (1) [r]ecognized in the United States as a safety standard providing an adequate level of safety, and (2) [c]ompatible with and maintained current with periodic revisions of applicable national codes and installation standards, and (3) [d]eveloped by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety field involved, or (4) [i]n lieu of paragraphs (c) (1), (2), and (3), the standard is currently designated as an American National Standards Institute (ANSI) safety-designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials'' (29 CFR 1910.7(c)).

OSHA notes also that its new policy preserves an NRTL's rights, under existing procedures, to file an application for recognition of new or replacement test standards. Moreover, OSHA currently allows NRTLs, through the existing application process, to provide comparability assessments as an abbreviated method to demonstrate an NRTL's capability to meet the requirements of an appropriate test standard. Using this process, the NRTL provides a detailed explanation of comparability as part of its application for the test standard. Therefore, UL's revised language is unnecessary.

III. Final Decision Adding Test Standards to the NRTL Program's List of Appropriate Test Standards

Table 1, below, lists test standards that OSHA is adding to the NRTL Program under the new policy. OSHA preliminarily determined, as specified in the November 25, 2013, **Federal Register** notice (see 78 FR 70349), that these test standards are appropriate test standards and proposed to include these test standards in the NRTL Program's list of appropriate test standards.

No commenter objected to the proposal to include these test standards in the NRTL Program's list of appropriate test standards. UL and NEMA expressed support for the proposal (OSHA–2013–0012–0008, OSHA–2013–0012–0009). OSHA, therefore, with one minor revision discussed in the following paragraph, is making a final determination that these test standards are appropriate test standards, and, therefore, is adding these test standards to the NRTL Program's list of appropriate test standards.

In the proposal, OSHA described one test standard as AAMI ES 60601–1, ''Medical Electrical Equipment—Part 1–2: General requirements for Basic Safety and Essential Performance-Collateral Standard: Electromagnetic Compatibility (third edition).'' Several commenters stated that OSHA listed the incorrect designation and title for this test standard (OSHA–2013–0012–0006, OSHA–2013–0012–0007, OSHA–2013–0012–0009). OSHA concurs with these commenters and, in the final table, describes the test standard as ''ANSI/AAMI ES60601–1:2005/(R)2012, Medical electrical equipment, Part 1: General requirements for basic safety and essential performance (with amendments).''

Mr. Dale Hallerberg stated that the list of appropriate standards should include, in addition to ANSI/AAMI ES60601–1:2005/(R)2012, standards that are collateral to ANSI/AAMIE ES60601–1:2005/(R)2012, such as ANSI/AAMI ES60601–1–2 through ANSI/AAMI ES60601–1–12 (OSHA–2013–0012–0007). Moreover, UL asked that OSHA consider incorporating 13 additional test standards in the NRTL Program's list of appropriate test standards (OSHA–2013–0012–0009). Finally, the Crane Power Line Safety Organization (CPLSO), in a late-filed comment, asked OSHA to consider incorporating CPLSO 14, which addresses testing crane insulating-link devices, in the NRTL Program's list of appropriate test standards (OSHA–2013–0012–0010). These recommended additions are beyond the scope of the present action. OSHA will, however, consider whether these recommended additions are appropriate test standards when it proposes additions to the list of appropriate test standards in a future **Federal Register** notice.

TABLE 1—TEST STANDARDS OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
ANSI/AAMI ES60601–1:2005/(R)2012	Medical electrical equipment, Part 1: General requirements for basic safety and essential performance (with amendments).
ISA 60079–0	Explosive Atmospheres—Part 0: Equipment—General Requirements.
ISA 60079–1	Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures ''d''.
ISA 60079–2	Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosures ''p''.
ISA 60079–5	Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling ''q''.
ISA 60079–6	Explosive Atmospheres—Part 6: Equipment Protection by Oil Immersion ''o''.
ISA 60079–7	Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety ''e''.
ISA 60079–11	Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety ''i''.
ISA 60079–15	Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection ''n''.
ISA 60079–18	Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation ''m''.
ISA 60079–26	Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.
ISA 60079–28	Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation.
ISA 60079–31	Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection by Enclosure ''t''.
ISA 61241–0	Electrical Apparatus for Use in Zone 20, Zone 21 and Zone 22 Hazardous (Classified) Locations—General Requirements.
ISA 61241–1	Electrical Apparatus for Use in Zone 21 and Zone 22 Hazardous (Classified) Locations—Protection by Enclosures ''tD''.
ISA 61241–2	Electrical Apparatus for Use in Zone 21 and Zone 22 Hazardous (Classified) Locations—Protection by Pressurization ''pD''.
ISA 61241–11	Electrical Apparatus for Use in Zone 20, Zone 21 and Zone 22 Hazardous (Classified) Locations—Protection by Intrinsic Safety ''iD''.
ISA 61241–18	Electrical Apparatus for Use in Zone 20, Zone 21 and Zone 22 Hazardous (Classified) Locations—Protection by Encapsulation ''mD''.
UL 50E	Enclosures for Electrical Equipment, Environmental Considerations.
UL 448B	Residential Fire Pumps Intended for One- and Two-Family Dwellings and Manufactured Homes.
UL 448C	Stationary, Rotary-Type, Positive-Displacement Pumps for Fire Protection Service.
UL 962A	Furniture Power Distribution Units.
UL 1004–1	Rotating Electrical Machines—General Requirements.
UL 1008A	Medium-Voltage Transfer Switches.
UL 1691	Single Pole Locking-Type Separable Connectors.
UL 1990	Nonmetallic Underground Conduit with Conductors.
UL 2108	February 27, 2004 Low Voltage Lighting Systems.

TABLE 1—TEST STANDARDS OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS—Continued

Test standard	Test standard title
UL 2208	Solvent Distillation Units.
UL 2238	Cable Assemblies and Fittings for Industrial Control and Signal Distribution.
UL 2239	Hardware for the Support of Conduit, Tubing, and Cable.
UL 2438	Outdoor Seasonal-Use Cord-Connected Wiring Devices.
UL 2560	Emergency Call Systems for Assisted Living and Independent Living Facilities.
UL 2572	Mass Notification Systems.
UL 2577	Suspended Ceiling Grid Low Voltage Systems and Equipment.
UL 2586	Hose Nozzle Valves.
UL 2738	Induction Power Transmitters and Receivers for Use with Low Energy Products.
UL 6142	Small Wind Turbine Systems.
UL 6420	Equipment Used for System Isolation and Rated as a Single Unit.
UL 60079–0	Explosive Atmospheres—Part 0: Equipment—General requirements.
UL 60079–1	Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures 'd'.
UL 60079–11	Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety 'i'.
UL 60079–15	Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection 'n'.
UL 60079–18	Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation ''m''.
UL 60079–5	Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling 'q'.
UL 60079–6	Explosive Atmospheres—Part 6: Equipment Protection by Oil Immersion 'o'.
UL 60079–7	Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety 'e'.
UL 60335–2–40	Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers.
UL 60730–2–2	Automatic Electrical Controls for Household and Similar Use; Part 2 Particular Requirements for Thermal Motor Protectors.
UL 60745–1	Hand-Held Motor-Operated Electric Tools—Safety—Part 1: General Requirements.
UL 60745–2–1	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–1: Particular Requirements for Drills and Impact Drills.
UL 60745–2–13	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–13: Particular Requirements For Chain Saws.
UL 60745–2–14	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–14: Particular Requirements for Planers.
UL 60745–2–15	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–15: Particular Requirements for Hedge Trimmers.
UL 60745–2–17	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–17: Particular Requirements for Routers and Trimmers.[1]
UL 60745–2–19	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–19: Particular Requirements For Jointers.
UL 60745–2–21	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–21: Particular Requirements For Drain Cleaners.
UL 60745–2–22	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–22: Particular Requirements For Cut-Off Machines.
UL 60745–2–3	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–3: Particular Requirements for Grinders, Polishers and Disk-Type Sanders.
UL 60745–2–5	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–5: Particular Requirements for Circular Saws.
UL 60947–4–1A	Low Voltage Switchgear and Controlgear—Part 4–1: Contactors and Motor-starters—Electromechanical Contractors and Motor-starters.
UL 60947–5–2	Low-voltage Switchgear and Controlgear—Part 5–2: Control Circuit Devices and Switching Elements—Proximity Switches.
UL 60950–1	Information Technology Equipment Safety—Part 1: General Requirements.
UL 60950–21	Information Technology Equipment—Safety—Part 21: Remote Power Feeding.
UL 60950–22	Information Technology Equipment Safety—Part 22: Equipment to be Installed Outdoors.
UL 60950–23	Information Technology Equipment Safety—Part 23: Large Data Storage Equipment.
UL 61010–031	Electrical Equipment for Measurement, Control, and Laboratory Use; Part 031: Safety Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test.
UL 61010–1	Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
UL 61010–2–030	Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–030: Particular Requirements for Testing and Measuring Circuits.
UL 61058–1	Switches for Appliances—Part 1: General Requirements.
UL 61800–5–1	Adjustable Speed Electrical Power Drive Systems—Part 5–1: Safety Requirements—Electrical, Thermal and Energy.
UL 62275	Cable Management Systems—Cable Ties for Electrical Installations.
UL 62368–1	Audio/Video, Information and Communication Technology Equipment—Part 1: Safety Requirements.

VI. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order

No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on March 24, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–06807 Filed 3–26–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Rehabilitation Plan and Award (OWCP–16). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 27, 2014.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0701, fax (202) 693–1449, Email *ferguson.yoon@dol.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.,* and the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* Both of these acts authorize OWCP to pay for approved vocational rehabilitation services to eligible workers with work-related disabilities. In order to decide whether to approve a rehabilitation plan, OWCP must receive a copy of the plan, supporting vocational testing materials and the estimated cost to implement the plan, broken down to show the fees, supplies, tuition and worker maintenance payments that are contemplated. OWCP also must receive the signature of the rehabilitation counselor to show that the proposed plan is appropriate. Form OWCP–16 is the standard format for the collection of this information. The regulations implementing these statutes allow for the collection of information needed for OWCP to determine if a rehabilitation plan should be approved and payment of any related expenses should be authorized. This information collection is currently approved for use through July 31, 2014.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this currently approved information collection in order to determine if a rehabilitation plan should be approved and payment of any related expenses authorized.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Rehabilitation Plan and Award.

OMB Number: 1240–0045.

Agency Number: OWCP–16.

Affected Public: Individual or households; businesses or other for-profit.

Total Respondents: 4,590.

Total Responses: 4,590.

Time per Response: 30 minutes.

Estimated Total Burden Hours: 2,295.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 20, 2014.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2014–06751 Filed 3–26–14; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (14–033)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC).

DATES: Wednesday, April 16, 2014, 9:00 a.m.–5:00 p.m., Local Time; Thursday, April 17, 2014, 9:00 a.m.–12:30 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 9H40, Program Review Center (PRC), 300 E Street SW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, 202–358–1148.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following:

—Aeronautics Committee Report
—Human Exploration and Operations Committee Report
—Science Committee Report
—Technology and Innovation Committee Report

The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must

use a touch tone phone to participate in this meeting. Any interested person may dial the toll free access number 866–753–1451 or toll access number 203–875–1553, and then the numeric participant passcode: 6957984 followed by the # sign. To join via WebEx, the link is *https://nasa.webex.com/*, the meeting number on April 16 is 998 887 573, and the password is NACApril16#; the meeting number on April 17 is 994 493 431, and the password is NACApril17#. (Password is case sensitive.) **Note:** If dialing in, please ''mute'' your telephone. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID before receiving access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, telephone); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide identifying information 3 working days in advance by contacting Ms. Marla King, via email at *marla.k.king@nasa.gov* or by telephone at 202–358–1148. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–06803 Filed 3–26–14; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0266]

Evaluations of Uranium Recovery Facility Surveys of Radon and Radon Progeny

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is issuing for public comment Interim Staff Guidance (ISG) FSME–ISG–01, ''Evaluations of Uranium Recovery Facility Surveys of Radon and Radon Progeny in Air and Demonstrations of Compliance with 10 CFR 20.1301.'' This ISG provides guidance to the NRC staff for evaluating uranium recovery (UR) licensee demonstrations of compliance with the public dose limits.

DATES: Submit comments by May 27, 2014. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0266. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: Duane Schmidt, Office of Federal and State Materials and Environmental Management Programs, telephone: 301–415–6919; email: *Duane.Schmidt@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2011–0266 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0266.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The revised draft ISG, FSME–ISG–01, ''Evaluations of Uranium Recovery Facility Surveys of Radon and Radon Progeny in Air and Demonstrations of Compliance with 10 CFR 20.1301,'' is available in ADAMS under accession no. ML13310A198. The initial version of the draft ISG is available in ADAMS under accession no. ML112720481.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2011–0266 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. Discussion

Uranium recovery facility licensees, including in-situ recovery facilities and conventional uranium mills, are required to perform surveys of radiation levels in unrestricted and controlled areas, and to perform surveys of radioactive materials in effluents released to unrestricted and controlled

areas to demonstrate compliance with the dose limits for individual members of the public provided in section 20.1301 of Title 10 of the *Code of Federal Regulations* (10 CFR). The NRC regulations in 10 CFR 20.1302 permit the use of alternative approaches to demonstrate compliance with the public dose limits.

This ISG is being developed to document the criteria to be used by the NRC staff to review radon and radon progeny surveys and evaluations of dose to members of the public submitted by licensees under 10 CFR 20.1302 to demonstrate compliance with the NRC public dose limits of 10 CFR 20.1301. Specifically, when finalized, this ISG will provide guidance to the NRC staff for reviewing licensee evaluations of doses to members of the public from radon-222 and radon-222 progeny from UR facilities including: (1) Surveys of environmental and effluent radon and radon progeny in air; and (2) radon-related aspects of demonstrations of compliance with the NRC's public dose limits of 10 CFR 20.1301. When finalized, this ISG may also be used by the NRC staff in evaluating portions of license applications, renewals, or amendments dealing with radon and radon progeny surveys and compliance. The NRC published an initial draft version of this ISG for public comment on November 21, 2011 (76 FR 72006). The NRC staff considered the public comments in preparing the revised draft report.

Dated at Rockville, Maryland, this 20th day of March 2014.

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. 2014–06785 Filed 3–26–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–13–033; NRC–2014–0061]

In the Matter of George Geisser, III

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order prohibiting Mr. Geisser, III from involvement in NRC-licensed activities for a period of 3 years. The order also requires Mr. Geisser, III to notify the NRC of any current involvement in NRC-licensed activities and for a period of 1 year after the 3-year period of prohibition has expired, that he provide a written notice for his first employment offer involving NRC-licensed activities.

DATES: *Effective Date:* See attachment.

ADDRESSES: Please refer to Docket ID NRC–2014–0061 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0061. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Thomas Marenchin, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2979, email: *Thomas.Marenchin@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 20th day of March 2014.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

Attachment—Order Prohibiting Involvement in NRC Licensed Activities

In the Matter of George Geisser, III; Order Prohibiting Involvement in NRC Licensed Activities

I.

George Geisser, III is President of Geisser Engineering Corporation (GEC) located in Riverside, Rhode Island. GEC does not possess a license issued by the NRC pursuant to Part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR). However, GEC is the holder of a State of Rhode Island materials license, which authorizes the possession and use of portable moisture/density gauges containing sealed sources of radioactive material within the State of Rhode Island. The holder of a State license may perform work authorized by the license in other State or Federal jurisdictions provided the State licensee files for reciprocity with the appropriate regulatory authority.

II.

On May 9, 2012, the NRC conducted an inspection at GEC facilities, with continued in-office review through August 15, 2013. The inspection was an examination of activities conducted under the general license pursuant to 10 CFR 150.20 as it relates to safety and security, compliance with the Commission's rules and regulations, and with the conditions of the GEC State of Rhode Island Radioactive Materials License RI–3L–050–01. During the inspection, an apparent violation of 10 CFR 150.20 was identified. The apparent violation involved GEC's failure to file for reciprocity on multiple occasions between October 21, 2009, and June 23, 2011. Specifically, GEC used portable gauges on 22 occasions in the State of Connecticut and at Newport Naval Station in Newport, Rhode Island, an area of exclusive Federal jurisdiction within the Agreement State of Rhode Island, without filing for reciprocity with the NRC.

Additionally, an investigation was conducted by the NRC's Office of Investigations (OI) to determine whether Mr. Geisser, the President/Owner of GEC, deliberately engaged in the use of licensed material in areas of NRC jurisdiction without filing for reciprocity. Based on the evidence gathered during the investigation, which was completed on April 26, 2013, the NRC concluded that Mr. Geisser acted deliberately.

In a letter dated August 16, 2013, the NRC informed Mr. Geisser that the NRC was considering escalated enforcement action against him for an apparent violation of the NRC's deliberate misconduct rule, 10 CFR 30.10. Specifically, the NRC concluded that Mr. Geisser apparently deliberately conducted and directed employees of GEC to use licensed material in areas of NRC jurisdiction on 22 occasions between October 21, 2009, and June 23, 2011, without filing for reciprocity with the NRC, which caused GEC to be in violation of 10 CFR 150.20.

In a separate letter dated August 16, 2013, the NRC informed Mr. Geisser that

the NRC was also considering escalated enforcement action against his company for multiple violations of 10 CFR 150.20. In those letters, the NRC offered GEC and Mr. Geisser a choice to attend a Predecisional Enforcement Conference (PEC) or to request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve issues associated with the apparent violation. During a conference call with NRC staff, Mr. Geisser indicated that he would like to participate in a PEC. A PEC was conducted on November 20, 2013.

During the PEC, Mr. Geisser indicated that, as President of GEC, he did, in fact, engage in the use of licensed material in NRC jurisdiction without filing for reciprocity with the NRC. However, he disagreed that his actions were deliberate. Mr. Geisser stated that he deliberately performed licensed activities in the Commonwealth of Massachusetts (MA) without filing for reciprocity with MA, but did not act deliberately to violate NRC's requirements when he conducted the same licensed activities in the State of Connecticut or at the Newport Naval Station in Rhode Island without filing for reciprocity with the NRC. Mr. Geisser further stated that he thought his Rhode Island license covered licensed activities for all locations within Rhode Island.

Based on the results of the inspection and the OI investigation, and information provided during the PEC, the NRC concluded that Mr. Geisser engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1).

III.

Mr. Geisser, the President of GEC, has engaged in deliberate misconduct, in violation of 10 CFR 30.10(a)(1), which has caused GEC to be in violation of 10 CFR 150.20(b)(1). GEC, as the holder of an Agreement State license, was required under 10 CFR 150.20(b)(1) to file NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters,'' a copy of its Agreement State specific license, and the appropriate fee, with the Regional Administrator of the appropriate NRC regional office 3 days prior to engaging in licensed activities in areas of NRC jurisdiction. The NRC must be able to rely on GEC and its employees to act with integrity and comply with all applicable NRC's requirements. As President of GEC, Mr. Geisser's actions in causing GEC to violate 10 CFR 150.20(b)(1) raised serious doubt as to whether he can be relied upon to comply with NRC's requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Geisser were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Geisser be prohibited from any involvement in NRC-licensed activities for a period of 3 years from the effective date of this Order. Additionally, Mr. Geisser is required to notify the NRC of his acceptance of his first employment offer involving NRC-licensed activities or his first becoming involved in NRC-licensed activities for a period of 1 year after the 3-year period of prohibition has expired.

IV.

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10, *it is hereby ordered that:*

1. George Geisser, III is prohibited for 3 years from the effective date of this Order from engaging in, supervising, directing, or in any other way conducting NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If George Geisser, III is currently involved in NRC-licensed activities as defined in Paragraph IV.1 above, other than as the President of GEC, he must cease those activities no later than the effective date of this Order, and within 15 days of the effective date of this Order, he must: (a) Provide written notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of a description of those activities, and the name, address, and telephone number of the entity where he is involved in the NRC-licensed activities, and (b) provide a copy of this to those entities.

3. For a period of 1 year after the 3-year period of prohibition has expired, George Geisser, III shall, within 20 days following acceptance of his first employment offer involving NRC-licensed activities, as defined in Paragraph IV.1 above, provide written notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the entity where he is, or will be, involved in the NRC-licensed activities, and a description of the type of activities. In the notification, George Geisser, III shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC's requirements.

The Director, Office of Enforcement, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by George Geisser, III of good cause.

V.

In accordance with 10 CFR 2.202, George Geisser, III, must submit a written answer to this Order under oath or affirmation within 20 days of its issuance. The response shall admit or deny the charge made in the Order. George Geisser, III's failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. Any person adversely affected by this Order may submit a written answer to this Order within 20 days of its issuance. In addition, George Geisser, III and any other person adversely affected by this Order may request a hearing on this Order within 30 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of

the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's public Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request or petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and constitute a Fair Use application.

If a person other than Mr. Geisser requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d). If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from issuance without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 20th day of March 2014.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,
Director, Office of Enforcement.

[FR Doc. 2014–06786 Filed 3–26–14; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collections for OMB Review; Comment Request; Multiemployer Plan Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of certain collections of information under its regulations on multiemployer plans under the Employee Retirement Income Security Act of 1974 (ERISA). This notice informs the public of PBGC's request and solicits public comment on the collections of information.

DATES: Comments should be submitted by April 28, 2014.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974. A copy of PBGC's request may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel, 1200 K St. NW., Washington, DC 20005–4026, or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The request is also available at *http://www.reginfo.gov.*

FOR FURTHER INFORMATION CONTACT: Donald F. McCabe, Attorney, Regulatory Affairs Group, Office of the General Counsel, or Catherine B. Klion, Assistant General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 1–800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY 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. OMB has approved and issued control numbers for the collections of information, described below, in PBGC's regulations relating to multiemployer plans. OMB approval expires March 31, 2014, or May 31, 2014, as specified below.[1]

The collections of information for which PBGC is requesting extension of OMB approval are as follows:

1. Mergers and Transfers Between Multiemployer Plans (29 CFR Part 4231) (OMB Control Number 1212–0022) (expires March 31, 2014)

Section 4231(a) and (b) of ERISA requires plans that are involved in a merger or transfer to give PBGC 120 days' notice of the transaction and provides that if PBGC determines that specified requirements are satisfied, the transaction will be deemed not to be in violation of ERISA section 406(a) or (b)(2) (dealing with prohibited transactions).

This regulation sets forth the procedures for giving notice of a merger or transfer under section 4231 and for requesting a determination that a transaction complies with section 4231.

PBGC uses information submitted by plan sponsors under the regulation to determine whether mergers and transfers conform to the requirements of ERISA section 4231 and the regulation.

PBGC estimates that there are 21 transactions each year for which plan sponsors submit notices and approval requests under this regulation. The estimated annual burden of the collection of information is 5.25 hours and $6,903.75.

2. Duties of Plan Sponsor Following Mass Withdrawal (29 CFR Part 4281) (OMB Control Number 1212–0032) (expires May 31, 2014)

Section 4281 of ERISA provides rules for plans that have terminated by mass withdrawal. Under section 4281, if nonforfeitable benefits exceed plan assets, the plan sponsor must amend the plan to reduce benefits. If the plan nevertheless becomes insolvent, the plan sponsor must suspend certain benefits that cannot be paid. If available resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from PBGC.

The regulation requires a plan sponsor to give notices of benefit reduction, notices of insolvency and annual updates, and notices of insolvency benefit level to PBGC and to participants and beneficiaries and, if necessary, to apply to PBGC for financial assistance.

PBGC uses the information it receives to make determinations required by ERISA, to identify and estimate the cash needed for financial assistance to terminated plans, and to verify the appropriateness of financial assistance payments. Plan participants and beneficiaries use the information to make personal financial decisions.

PBGC estimates that plan sponsors of terminated plans each year give benefit reduction notices for three plans and give notices of insolvency benefit level and annual updates, and submit requests for financial assistance, for 54 plans. Of those 54 plans, PBGC estimates that plan sponsors each year will submit 255 requests (ranging from monthly to annual) for financial assistance. PBGC estimates that plan sponsors each year give notices of insolvency for seven plans. The estimated annual burden of the collection of information is one hour and $694,089.

Issued in Washington, DC, this 21st day of March, 2014.

Judith R. Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2014–06727 Filed 3–26–14; 8:45 am]

BILLING CODE 7709–02–P

[1] These two information collections would be affected by PBGC's recent proposed rule on Multiemployer Plans; Valuation and Notice Requirements, 79 FR 4642 (Jan. 29, 2104). OMB has concluded review of the proposed rule changes to the information collections, leaving the terms of its current approval in effect.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 701, OMB Control No. 3235–0522, SEC File No. 270–306.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') the request for extension of the previously approved collection of information discussed below.

Rule 701(17 CFR 230.701) under the Securities Act of 1933 (''Securities Act'') (15 U.S.C. 77a *et seq.*) provides an exemption for certain issuers from the registration requirements of the Securities Act for limited offerings and sales of securities issued under compensatory benefit plans or contracts. The purpose of Rule 701 is to ensure that a basic level of information is available to employees and others when substantial amounts of securities are issued in compensatory arrangements. Information provided under Rule 701 is mandatory. We estimate that approximately 300 companies annually rely on the Rule 701 exemption and that it takes 2 hours to prepare each response. We estimate that 25% of the 2 hours per response (0.5 hours) is prepared by the company for a total annual reporting burden of 150 hours

(0.5 hours per response × 300 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 21, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06764 Filed 3–26–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 13e–3 (Schedule 13E–3); OMB Control No. 3235–0007, SEC File No. 270–1.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') the request for extension of the previously approved collection of information discussed below.

Rule 13e–3 (17 CFR 240.13e–3) and Schedule 13E–3 (17 CFR 240.13e–100)—Rule 13e–3 prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate. Schedule 13E–3 provides shareholders and the marketplace with material information concerning a going private transaction. The information collected permits verification of compliance with securities laws requirements and ensures the public availability and dissemination of the collected information. This information is made available to the public. Information provided on Schedule 13E–3 is mandatory. We estimate that Schedule 13E–3 is filed by approximately 100 issuers annually and it takes approximately 137.42 hours per response. We estimate that 25% of the 137.42 hours per response is prepared by the filer for a total annual reporting burden of 3,436 hours (34.36 hours per response × 100 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 21, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06763 Filed 3–26–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30988; 812–14245]

Empowered Funds, LLC and Empowered Funds ETF Trust; Notice of Application

March 21, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: Empowered Funds, LLC (''Empowered Funds'') and Empowered Funds ETF Trust (the ''Trust'').

SUMMARY: *Summary of Application:* Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on November 26, 2013 and amended on March 12, 2014.

Hearing or Notification of Hearing: An order granting the requested relief 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 April 15, 2014, 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, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Empowered Funds and the Trust: Empowered Funds, LLC, 213 Foxcroft Road, Broomall, Pennsylvania 19008.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876 or Mary Kay Frech, Branch Chief, at (202) 551–6814 (Division of Investment Management, Office of Chief Counsel).

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 statutory trust organized under the laws of Delaware and will register with the Commission as an open-end management investment company. Applicants currently intend that the initial series of the Trust will be the Empowered Funds Quantitative Value ETF (the ''Initial Fund''). The Initial Fund will seek to grow capital by investing in domestic equity securities that Empowered Funds believes to be undervalued.

2. Empowered Funds, a Pennsylvania limited liability company that intends to do business under the name ''Alpha Architect'', will be registered with the Commission as an investment adviser under the Investment Adviser Act of 1940 (''Advisers Act''), and will be the investment adviser to the Initial Fund. The Advisor (as defined below) may enter into sub-advisory agreements with investment advisers to act as sub-advisors with respect to the Funds (as defined below) (each a ''Sub-Advisor''). Applicants state that any Sub-Advisor will be registered, or not subject to registration, under the Advisers Act. A registered broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (the ''Exchange Act'') will be selected and approved by the Board (as defined below) to act as the distributor and principal underwriter of the Funds (the ''Distributor'').

3. Applicants request that the order apply to the Initial Fund and any future series of the Trust or of any other open-end management companies that may utilize active management investment strategies (collectively, ''Future Funds''). Any Future Fund will (a) be advised by Empowered Funds or an entity controlling, controlled by, or under common control with Empowered Funds (Empowered Funds and each such other entity and any successor thereto included in the term ''Advisor''),[1] and (b) comply with the terms and conditions of the application.[2] The Initial Fund and Future Funds together are the ''Funds''.[3] Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies traded in the U.S. and/or non-U.S. markets, and derivatives, other assets, and other investment positions (''Portfolio Instruments'').[4] Funds may invest in ''Depositary Receipts''.[5] Each Fund will operate as an actively managed exchange-traded fund (''ETF'').

4. Applicants request that any exemption under section 12(d)(1)(J) of the Act apply to: (a) With respect to section 12(d)(1)(B), any Fund that is currently or subsequently part of the same ''group of investment companies'' as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act as well as any principal underwriter for the Fund and any Brokers selling Shares of a Fund to an Investing Fund (as defined below); and (b) with respect to 12(d)(1)(A), each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds, and that enters into a FOF Participation Agreement (as defined below) to acquire Shares of a Fund (such management investment companies, ''Investing Management Companies,'' such unit investment trusts, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together, ''Investing Funds''). Investing Funds do not include the Funds.[6]

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares. Applicants anticipate that the trading price of a Share will range from $10 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund (''Authorized Participant'') with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) a Broker or other participant, in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (b) a participant in the DTC (''DTC Participant'').

6. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[7] On any given Business Day,[8] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[9] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not

[1] For the purposes of the requested order, a ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Advisor to a Future Fund will be registered as an investment adviser under the Advisers Act. All entities that currently intend to rely on the 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.

[3] Applicants further request that the order apply to any future Distributor of the Funds, which would be a Broker and would comply with the terms and conditions of the application. The Distributor of any Fund may be an affiliated person of the Advisor and/or Sub-Advisors.

[4] If a Fund invests in derivatives, then (a) the board of trustees (''Board'') of the Fund will periodically review and approve the Fund's use of derivatives and how the Advisor assesses and manages risk with respect to the Fund's use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[5] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. A Fund will not invest in any Depositary Receipts that the Advisor or Sub-Advisor deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants, any Future Fund, any Advisor or any Sub-Advisor will serve as the depositary bank for any Depositary Receipts held by a Fund.

[6] An Investing Fund may rely on the order only to invest in Funds and not in any other registered investment company.

[7] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[8] Each Fund will sell and redeem Creation Units on any day the Fund is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[9] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

tradeable round lots;[10] or (c) TBA Transactions,[11] short positions and other positions that cannot be transferred in kind[12] will be excluded from the Creation Basket.[13] If there is a difference between NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Funds holding non-U.S. investment (''Global Funds''), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[14]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Stock Exchange''), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

9. A Fund may recoup the settlement costs charged by NSCC and DTC by imposing a transaction fee on investors purchasing or redeeming Creation Units (the ''Transaction Fee''). The Transaction Fee will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been determined appropriate by the Advisor to defray the transaction expenses that will be incurred by a Fund when an investor purchases or redeems Creation Units.[15] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Shares will be listed and traded at negotiated prices on a Stock Exchange and traded in the secondary market. Applicants expect that Stock Exchange specialists or market makers (''Market Makers'') will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[16] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[17] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.

13. Neither the Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund''. Instead, each Fund will be marketed as an ''actively managed exchange-traded fund''. In any advertising material where features of obtaining, buying or selling Shares traded on the Stock Exchange are described, there will be an appropriate

[10] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[11] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[12] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[13] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

[14] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[15] Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, the Transaction Fee will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

[16] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Stock Exchange (including NYSE Arca), one or more member firms of that Stock Exchange will act as Market Maker and maintain a market for Shares trading on that Stock Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares as discussed below.

[17] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

statement to the effect that Shares are not individually redeemable.

14. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[18]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that 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. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. 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) if the exemption is consistent with the public interest and the protection of investors.

Sections 2(a)(32) and 5(a)(1) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days

[18] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, each Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for its NAV calculation at the end of such Business Day.

following the tender of a Creation Unit.[19]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state each Global Fund's statement of additional information (''SAI'') will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not affect redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment 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, or any other broker or dealer from selling its shares 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.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Investing Fund Advisor''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company (''Investing Fund Sub-Advisor''), any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Advisor or any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor (''Investing Fund's Sub-Advisory Group'').

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate[20] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''independent directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[21]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a 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 permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

[19] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[20] An ''Investing Fund Affiliate'' is any Investing Fund Advisor, Investing Fund Sub-Advisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[21] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include 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 and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Advisor (an ''Affiliated Fund'').

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[22] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or second-tier affiliates.[23]

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Instruments. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds, and the valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner and on the same terms for all, regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[24] The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Advisor or any Sub-Advisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting

[22] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[23] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to also cover the in-kind transactions that may accompany such sales and redemptions.

[24] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Advisor or a person controlling, controlled by or under common control with the Investing Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Advisor and any Investing Fund Sub-Advisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Advisor will waive fees otherwise payable to the Investing Fund Sub-Advisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Advisor, or an affiliated person of the Investing Fund Sub-Advisor, other than any advisory fees paid to the Investing Fund Sub-Advisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Advisor. In the event that the Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) 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 (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund 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 Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the 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.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company,

including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) relief will acquire 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 permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71767; File No. SR–NYSEArca–2014–11]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Shares of the SPDR SSgA Risk Aware ETF; SPDR SSgA Large Cap Risk Aware ETF; and SPDR SSgA Small Cap Risk Aware ETF Under NYSE Arca Equities Rule 8.600

March 21, 2014.

I. Introduction

On January 24, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of SPDR SSgA Risk Aware ETF; SPDR SSgA Large Cap Risk Aware ETF; and SPDR SSgA Small Cap Risk Aware ETF (each, a ''Fund'' and, collectively, ''Funds'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on February 7, 2014.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of Proposed Rule Change

The Exchange proposes to list and trade Shares of the Funds pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by SSgA Active ETF Trust (''Trust''), which is organized as a Massachusetts business trust and is registered with the Securities and Exchange Commission (''Commission'') as an open-end management investment company.[4] SSgA Funds Management, Inc. (''Adviser'') will serve as the investment adviser to the Funds.[5] State Street Global Markets, LLC (''Distributor'' or ''Principal Underwriter'') will be the principal underwriter and distributor of the Funds' Shares. State Street Bank and Trust Company (''Administrator,'' ''Custodian'' or ''Transfer Agent'') will serve as administrator, custodian and transfer agent for the Funds.

The Exchange has made the following representations and statements in describing the Funds and their respective investment strategies, including other portfolio holdings and investment restrictions.[6]

General

The Funds are intended to be managed in a ''master-feeder'' structure, under which each Fund will invest substantially all of its assets in a corresponding portfolio (each, a ''Portfolio'') (*i.e.* a ''master fund''), which is a separate mutual fund registered under the 1940 Act that has an identical investment objective. As a result, each Fund (*i.e.,* a ''feeder fund'') will have an indirect interest in all of the securities and other assets owned by each corresponding Portfolio. Because of this indirect interest, each Fund's investment returns should be the same as those of the corresponding Portfolio, adjusted for the expenses of the Fund. In extraordinary instances, each Fund reserves the right to make direct investments in securities.

The Adviser will manage the investments of each respective Portfolio. Under the master-feeder arrangement, investment advisory fees charged at the master-fund level are deducted from the advisory fees charged at the feeder-fund level. This arrangement avoids a ''layering'' of fees, *e.g.,* a Fund's total annual operating expenses would be no higher as a result of investing in a master-feeder arrangement than they would be if the Fund pursued its investment objectives directly. Each Fund may discontinue investing through the master-feeder arrangement and pursue its investment objectives directly if the Fund's Board of Trustees determines that doing so would be in the best interests of shareholders.

The Funds will not be index Funds. The Funds will be actively managed and will not seek to replicate the performance of a specified index.

SPDR SSgA Risk Aware ETF

The SPDR SSgA Risk Aware ETF will seek to provide competitive returns compared to the broad U.S. equity market and capital appreciation.

Under normal circumstances,[7] the Fund will invest all of its assets in the SSgA Risk Aware Portfolio (''Risk

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71468 (Feb. 3, 2014), 79 FR 7487 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). The Exchange states that on December 14, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Funds (File Nos. 333–173276 and 811–22542) (''Registration Statement''). In addition, the Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the1940 Act. *See* Investment Company Act Release No. 29524 (December 13, 2010) (File No. 812–13487) (''Exemptive Order'').

[5] The Exchange states that Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Funds' portfolios. The Exchange states that in the event (a) the Adviser or any sub-adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is, or becomes affiliated with, a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[6] The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, net asset value (''NAV'') calculation, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statements, as applicable. *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[7] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Aware Portfolio''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Risk Aware Portfolio.

In seeking its objective, the Risk Aware Portfolio will invest in a diversified selection of equity securities included in the Russell 3000 Index that the Adviser believes are aligned with predicted investor risk preferences.[8] The Russell 3000 Index measures the performance of the largest 3,000 U.S. companies, including business development companies, representing approximately 98% of the investable U.S. equity market. The Russell 3000 Index is constructed to provide a comprehensive, unbiased, and stable barometer of the broad market and is completely reconstituted annually to ensure new and growing equities are reflected. As of September 30, 2013, the Russell 3000 Index was comprised of 2,965 stocks.

In selecting securities for the Risk Aware Portfolio, the Adviser will utilize a proprietary quantitative investment process to measure and predict investor risk preferences. This investment process recognizes that the attributes that render a particular security ''risky'' or ''safe'' from an investor's perspective will change over time. The process therefore will begin with a broad set of plausible dimensions of risk, or factors that may be viewed by investors as contributing to a security's risk level at any given time. This set will include, among many other items, market beta, liquidity, and exposure to certain commodities, leading economic indicators, currency, credit risk, and performance differences between cyclical and defensive sectors. The Adviser will then use a sequence of procedures to develop a subset of attributes representing those it believes to be relevant to investors at a given time. This subset will help form the Adviser's forecast for aggregate risk appetite and assist the Adviser in generating the groups of securities likely to benefit the most and least in light of that forecast. Different predictions of risk appetite may result in portfolios that are more defensive or risk-seeking, based on what the market considers safe and/or risky at a given time. For example, during periods of anticipated investor preference for low risk, the Adviser will adjust the Risk Aware Portfolio's composition to be defensive and may increase exposure to large cap companies. On the other hand, during periods of anticipated investor preference for high risk, the Adviser will adjust the Risk Aware Portfolio's composition to be risk-seeking and may increase exposure to small cap companies. Similarly, exposures to value, growth, quality and other themes will vary depending on how they align with investor risk appetite at a given time. In periods of anticipated investor preference for moderate risk, the Risk Aware Portfolio's composition will more closely reflect the weighted composition of the Russell 3000 Index. The Adviser believes the ebbing and flowing of risk preferences give this strategy the potential to provide competitive returns relative to the Russell 3000 Index over the long term. The Risk Aware Portfolio will be non-diversified for purposes of the 1940 Act, and as a result may invest a greater percentage of its assets in a particular issuer than a diversified fund. However, it is expected that the Risk Aware Portfolio will have exposure to a diversified mix of equity securities.

SPDR SSgA Large Cap Risk Aware ETF

The SPDR SSgA Large Cap Risk Aware ETF will seek to provide competitive returns compared to the large cap U.S. equity market and capital appreciation.

Under normal circumstances,[9] the Fund will invest all of its assets in the SSgA Large Cap Risk Aware Portfolio (''Large Cap Portfolio''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Large Cap Portfolio.

In seeking its objective, the Large Cap Portfolio will invest in a diversified selection of equity securities included in the Russell 1000 Index that the Adviser believes are aligned with predicted investor risk preferences.[10] The Russell 1000 Index measures the performance of the large-cap segment of the U.S. equity universe. It is a subset of the Russell 3000® Index and includes approximately 1,000 of the largest securities, which may include business development companies, based on a combination of their market cap and current index membership. The Russell 1000 Index represents approximately 92% of the U.S. market. The Russell 1000 Index is constructed to provide a comprehensive and unbiased barometer for the large-cap segment and is completely reconstituted annually to ensure new and growing equities are reflected. As of September 30, 2013, the Russell 1000 Index was comprised of 1,003 stocks.

Under normal circumstances, the Large Cap Portfolio will invest at least 80% of its net assets (plus the amount of borrowings for investment purposes) in securities of large-cap companies. The Large Cap Portfolio considers large-cap companies to be companies with market capitalizations falling within the range of the Russell 1000 Index at the time of initial purchase. In selecting securities for the Large Cap Portfolio, the Adviser will utilize a proprietary quantitative investment process to measure and predict investor risk preferences. This investment process recognizes that the attributes that render a particular security ''risky'' or ''safe'' from an investor's perspective will change over time. The process therefore will begin with a broad set of plausible dimensions of risk, or factors that may be viewed by investors as contributing to a security's risk level at any given time. This set includes, among many other items, market beta, liquidity, and exposure to certain commodities, leading economic indicators, currency, credit risk, and performance differences between cyclical and defensive sectors. The Adviser then will use a sequence of procedures to develop a subset of attributes representing those it believes to be relevant to investors at a given time. This subset will help form the Adviser's forecast for aggregate risk appetite and assist the Adviser in generating the groups of securities likely to benefit the most and least in light of that forecast. Different predictions of risk appetite may result in portfolios that are more defensive or risk-seeking, based on what the market considers safe and/or risky at a given time. For example, during periods of anticipated investor preference for low risk, the Adviser will adjust the Large Cap Portfolio's composition to be defensive. On the other hand, during periods of anticipated investor preference for high risk, the Adviser will adjust the Large Cap Portfolio's composition to be risk-seeking. Similarly, exposures to value, growth, quality and other themes will vary depending on how they align with investor risk appetite at a given time. In periods of anticipated investor preference for moderate risk, the Large Cap Portfolio's composition will more closely reflect the weighted composition of the Russell 1000 Index. The Adviser believes the ebbing and flowing of risk preferences give this strategy the potential to provide competitive returns relative to the Russell 1000 Index over the long term. The Large Cap Portfolio

[8] The Portfolios will invest only in equity securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[9] *See supra* note 7.

[10] *See supra* note 8.

will be non-diversified for purposes of the 1940 Act, and as a result may invest a greater percentage of its assets in a particular issuer than a diversified fund. However, it is expected that the Large Cap Portfolio will have exposure to a diversified mix of equity securities.

SPDR SSgA Small Cap Risk Aware ETF

The SPDR SSgA Small Cap Risk Aware ETF will seek to provide competitive returns compared to the small cap U.S. equity market and capital appreciation.

Under normal circumstances,[11] the Fund will invest all of its assets in the SSgA Small Cap Risk Aware Portfolio (''Small Cap Portfolio''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Small Cap Portfolio.

In seeking its objective, the Small Cap Portfolio will invest in a diversified selection of equity securities included in the Russell 2000 Index that the Adviser believes are aligned with predicted investor risk preferences.[12] The Russell 2000 Index measures the performance of the small-cap segment of the U.S. equity market. The Russell 2000 Index is a subset of the Russell 3000® Index representing approximately 10% of the total market capitalization of the Russell 3000® Index. The Russell 2000 Index includes approximately 2000 of the smallest securities, including business development companies, based on a combination of their market cap and current index membership. The Russell 2000 Index is constructed to provide a comprehensive and unbiased small-cap barometer and is completely reconstituted annually to ensure larger stocks do not distort the performance and characteristics of the true small-cap opportunity set. As of September 30, 2013, the Russell 2000 Index was comprised of 1,962 securities.

Under normal circumstances, the Small Cap Portfolio will invest at least 80% of its net assets (plus the amount of borrowings for investment purposes) in securities of small-cap companies. The Small Cap Portfolio considers small-cap companies to be companies with market capitalizations falling within the range of the Russell 2000 Index at the time of initial purchase. In selecting securities for the Small Cap Portfolio, the Adviser will utilize a proprietary quantitative investment process to measure and predict investor risk preferences. This investment process recognizes that the attributes that render a particular security ''risky'' or ''safe'' from an investor's perspective will change over time. The process therefore will begin with a broad set of plausible dimensions of risk, or factors that may be viewed by investors as contributing to a security's risk level at any given time. This set will include, among many other items, market beta, liquidity, and exposure to certain commodities, leading economic indicators, currency, credit risk, and performance differences between cyclical and defensive sectors. The Adviser then will use a sequence of procedures to develop a subset of attributes representing those it believes to be relevant to investors at a given time. This subset will help form the Adviser's forecast for aggregate risk appetite and assist the Adviser in generating the groups of securities likely to benefit the most and least in light of that forecast. Different predictions of risk appetite may result in portfolios that are more defensive or risk-seeking, based on what the market considers safe and/or risky at a given time. For example, during periods of anticipated investor preference for low risk, the Adviser will adjust the Small Cap Portfolio's composition to be defensive. On the other hand, during periods of anticipated investor preference for high risk, the Adviser will adjust the Small Cap Portfolio's composition to be risk-seeking. Similarly, exposures to value, growth, quality and other themes will vary depending on how they align with investor risk appetite at a given time. In periods of anticipated investor preference for moderate risk, the Small Cap Portfolio's composition will more closely reflect the weighted composition of the Russell 2000 Index. The Adviser believes the ebbing and flowing of risk preferences give this strategy the potential to provide competitive returns relative to the Russell 2000 Index over the long term. The Small Cap Portfolio will be non-diversified for purposes of the 1940 Act, and as a result may invest a greater percentage of its assets in a particular issuer than a diversified fund. However, it is expected that the Small Cap Portfolio will have exposure to a diversified mix of equity securities.

Other Investments

While, under normal circumstances, the Adviser, with respect to each Portfolio, will invest at least 80% of such Portfolio's net assets in equity securities, as described above, the Adviser may invest up to 20% of a Portfolio's net assets in other securities and financial instruments, as described below.

Each Fund may (either indirectly through its investments in the corresponding Portfolio or, in the absence of normal circumstances,[13] directly) invest in the following types of investments. The investment practices of the Portfolios are the same in all material respects to those of the Funds.

In the absence of normal circumstances, a Fund may (either directly or through the corresponding Portfolio) temporarily depart from its normal investment policies and strategies provided that the alternative is consistent with the Fund's investment objective and is in the best interest of the Fund. For example, a Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress.

Each Portfolio may invest in short term instruments, including money market instruments (including money market funds advised by the Adviser), cash and cash equivalents on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that may include but are not limited to: (i) Shares of money market funds (including those advised by the Adviser); (ii) obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed time deposits and other obligations of U.S. and foreign banks (including foreign branches) and similar institutions; (iv) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investor's Service or ''A–1'' by Standard & Poor's, or if unrated, of comparable quality as determined by the Adviser; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of foreign banks (including U.S. branches) that, in the opinion of the Adviser, are of comparable quality to obligations of U.S. banks which may be purchased by a Portfolio. Commercial paper consists of short-term, promissory notes issued by banks, corporations and other entities to finance short-term credit needs. Any of these instruments may be purchased on a current or a forward-settled basis.

Each Portfolio may invest in repurchase agreements with commercial

[11] *See supra* note 7.

[12] *See supra* note 8.

[13] *See supra* note 7.

banks, brokers or dealers to generate income from its excess cash balances and to invest securities lending cash collateral. The Exchange states that a repurchase agreement is an agreement under which a fund acquires a financial instrument (*e.g.,* a security issued by the U.S. Government or an agency thereof, a banker's acceptance or a certificate of deposit) from a seller, subject to resale to the seller at an agreed upon price and date (normally, the next business day).

Each Portfolio may invest in convertible securities. Convertible securities are bonds, debentures, notes, preferred stocks or other securities that may be converted or exchanged (by the holder or by the issuer) into shares of the underlying common stock (or cash or securities of equivalent value) at a stated exchange ratio. A convertible security may also be called for redemption or conversion by the issuer after a particular date and under certain circumstances (including a specified price) established upon issue.

Each Portfolio may invest in U.S. Government obligations. U.S. Government obligations are a type of bond. U.S. Government obligations include securities issued or guaranteed as to principal and interest by the U.S. Government, its agencies or instrumentalities.

Each Portfolio may invest in U.S. agency mortgage pass-through securities. The Exchange states that the term ''U.S. agency mortgage pass-through security'' refers to a category of pass-through securities backed by pools of mortgages and issued by one of several U.S. Government-sponsored enterprises: The Government National Mortgage Association (''Ginnie Mae''), Federal National Mortgage Association (''Fannie Mae''), or Federal Home Loan Mortgage Corporation (''Freddie Mac'').

The Portfolios will seek to obtain exposure to U.S. agency mortgage pass-through securities primarily through the use of ''to-be-announced'' or ''TBA transactions.'' The Exchange states that ''TBA'' refers to a commonly used mechanism for the forward settlement of U.S. agency mortgage pass-through securities, and not to a separate type of mortgage-backed security, and that most transactions in mortgage pass-through securities occur through the use of TBA transactions.[14]

Each Portfolio may purchase U.S. exchange-listed common stocks and U.S. exchange-listed preferred securities of foreign corporations. Investments in common stock of foreign corporations may also be in the form of American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs'') and European Depositary Receipts (''EDRs'') (collectively ''Depositary Receipts''). A Portfolio may invest in unsponsored Depositary Receipts.

Each Portfolio may invest in bonds, including corporate bonds as well as U.S. registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national entities. Each Portfolio may invest up to 10% of its net assets in high yield debt securities.

The Portfolios may invest in inflation-protected public obligations, commonly known as ''TIPS,'' of the U.S. Treasury, as well as TIPS of major governments and emerging market countries, excluding the United States. The Exchange states that TIPS are a type of security issued by a government that are designed to provide inflation protection to investors.

Each Portfolio may invest in variable and floating rate securities.[15] The Exchange states that variable rate securities are instruments issued or guaranteed by entities such as (1) the U.S. government or an agency or instrumentality thereof, (2) corporations, (3) financial institutions, (4) insurance companies, or (5) trusts that have a rate of interest subject to adjustment at regular intervals but less frequently than annually.

Each Portfolio may invest in Variable Rate Demand Obligations (''VRDOs''). The Exchange states that VRDOs are short-term tax exempt fixed income instruments whose yield is reset on a periodic basis and that VRDO securities tend to be issued with long maturities of up to 30 or 40 years; however, they are considered short-term instruments because they include a put feature which coincides with the periodic yield reset.

Each Portfolio may invest in restricted securities. The Exchange states that restricted securities are securities that are not registered under the Securities Act, but which can be offered and sold to ''qualified institutional buyers'' under Rule 144A under the Securities Act.[16]

Each Portfolio may conduct foreign currency transactions on a spot (*i.e.,* cash) or forward basis (*i.e.,* by entering into forward contracts to purchase or sell foreign currencies). At the discretion of the Adviser, the Portfolios may enter into forward currency exchange contracts for hedging purposes to help reduce the risks and volatility caused by changes in foreign currency exchange rates, or to gain exposure to certain currencies.

Each Portfolio may invest in the securities of other investment companies, including affiliated funds, money market funds and closed-end funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act. Each Portfolio may invest in exchange-traded products (''ETPs'').[17] ETPs include exchange-traded funds registered under the 1940 Act; exchange traded commodity trusts; and exchange traded notes (''ETNs'').[18]

The Adviser may invest up to 20% of its total assets in one or more ETPs that are qualified publicly traded partnerships (''QPTPs'') and whose principal activities are the buying and selling of commodities or options, futures, or forwards with respect to commodities.[19] The Exchange states that a QPTP is an entity that is treated as a partnership for federal income tax

[14] To minimize the risk of default by a counterparty, a Portfolio will enter into TBA transactions only with established counterparties (such as major broker-dealers) and the Adviser will monitor the creditworthiness of such counterparties.

[15] A variable rate security provides for the automatic establishment of a new interest rate on set dates. A floating rate security provides for the automatic adjustment of its interest rate whenever a specified interest rate changes. Interest rates on these securities are ordinarily tied to, and are a percentage of, a widely recognized interest rate, such as the yield on 90-day U.S. Treasury bills or the prime rate of a specified bank.

[16] When Rule 144A restricted securities present an attractive investment opportunity and meet other selection criteria, a Portfolio may make such investments whether or not such securities are ''illiquid'' depending on the market that exists for the particular security. The Board has delegated the responsibility for determining the liquidity of Rule 144A restricted securities that a Portfolio may invest in to the Adviser. *See infra* note 20.

[17] For each of the Portfolios, ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600), and closed-end funds. The ETPs all will be listed and traded in the U.S. on registered exchanges. While a Fund may invest in inverse ETPs, a Fund will not invest in leveraged or inverse leveraged ETPs (*e.g.,* 2X or 3X).

[18] ETNs are debt obligations of investment banks which are traded on exchanges and the returns of which are linked to the performance of market indexes. In addition to trading ETNs on exchanges, investors may redeem ETNs directly with the issuer on a weekly basis, typically in a minimum amount of 50,000 units, or hold the ETNs until maturity.

[19] The Exchange states that examples of such entities are the PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, PowerShares DB Gold Fund, PowerShares DB Silver Fund, PowerShares DB Base Metals Fund, and PowerShares DB Agriculture Fund, which are listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 8.200.

purposes, subject to certain requirements, and that income from QPTPs is generally qualifying income for purposes of Subchapter M of the Internal Revenue Code.

The Portfolios may invest in real estate investment trusts (''REITs'').

Each Portfolio may enter into reverse repurchase agreements.

Neither the Funds nor the Portfolios will invest in options contracts, futures contracts, or swap agreements.

The Funds' investments will be consistent with the Funds' investment objectives and will not be used to enhance leverage.

Each Fund is classified as ''non-diversified.'' Each Fund will be ''non-diversified'' under the 1940 Act and may invest more of its assets in fewer issuers than ''diversified'' funds.

The Funds do not intend to concentrate their investments in any particular industry.

The Funds intend to qualify for and to elect treatment as a separate regulated investment company under Subchapter M of the Internal Revenue Code.

Each Portfolio may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser.[20] Each Portfolio will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [21] and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[23] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the initial and continued listing criteria in NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[24] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares of each Fund will be available via the Consolidated Tape Association (''CTA'') highspeed line. In addition, the IOPV,[25] which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[26] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Funds' calculation of NAV at the end of the business day.[27] In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for each Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange, LLC (''NYSE'') via the National Securities Clearing Corporation. The basket will represent one creation unit of a Fund. The NAV of each Fund will be determined once each business day, normally as of the close of normal trading on the NYSE (normally, 4:00 p.m., Eastern Time).[28] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The intra-day, closing, and settlement prices of the Portfolio securities and other assets held by the Funds and Portfolios are readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Quotation and last sale information for the underlying U.S. exchange-traded equities, including exchange-traded ETPs, will be available via the CTA high-speed line and from the national securities exchange on which they are listed. Pricing information regarding each asset class in which the Funds or Portfolios will invest is generally available through nationally recognized data service providers through subscription arrangements. Quotation information from brokers and dealers or pricing services will be available for fixed income securities, including U.S. Government obligations, other money market instruments, repurchase and reverse repurchase agreements,

[20] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[21] 15 U.S.C. 78f.

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] According to the Exchange, the IOPV calculations are estimates of the value of the Funds' NAV per Share using market data converted into U.S. dollars at the current currency rates. The IOPV price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the IOPV and the market price may occur. The IOPV should not be viewed as a ''real-time'' update of the NAV per Share of a Fund, which is calculated only once a day.

[26] According to the Exchange, several major market data vendors display and/or make widely available IOPVs taken from CTA or other data feeds.

[27] On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Funds and of the Portfolios the following information on the Funds' Web site: ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[28] Each Fund will calculate NAV using the NAV of the respective Portfolio. The NAV of a Portfolio will be calculated by the Custodian and determined at the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. Eastern time) on each day that the NYSE is open, provided that assets (and, accordingly, a Portfolio's NAV) may be valued as of the announced closing time for trading in instruments on any day that the applicable exchange or market on which a Portfolio's investments are traded announces an early closing time.

convertible securities, U.S. agency mortgage pass-through securities, unsponsored Depositary Receipts, corporate bonds, TIPS, variable floating rate securities (including VRDOs), and spot and forward currency transactions held by the Funds and Portfolios. The Funds' Web site will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share of each Fund will be calculated daily, and that the NAV and the Disclosed Portfolio for each Fund will be made available to all market participants at the same time. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[29] and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which trading in the Shares of a Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Reporting Authority must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Funds' portfolios. In addition, the Exchange states that the Adviser has implemented a ''fire wall'' with respect to its affiliated broker-dealer regarding access to information concerning the composition or changes to the Funds' portfolios.[30] The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[31] The Exchange further represents that these procedures are adequate to properly monitor Exchange-trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Moreover, prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying equity securities (including, without limitation, sponsored ADRs and ETPs) and other exchange-traded securities with other markets and other entities that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying equity securities (including, without limitation, sponsored ADRs and ETPs) and other exchange-traded securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying equity securities (including, without limitation, sponsored ADRs and ETPs) and other exchange-traded securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) The Portfolios will invest only in equity securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (d) how information regarding the IOPV is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act,[32] as provided by NYSE Arca Equities Rule 5.3.

(7) Each Portfolio may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.

(8) Under normal circumstances, each Fund will invest all of its assets in its corresponding Portfolio. Furthermore, under normal circumstances, the Adviser, with respect to each Portfolio,

[29] These reasons may include: (1) The extent to which trading is not occurring in the securities or the financial instruments composing the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.

[30] *See supra* note 5. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[31] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[32] 17 CFR 240.10A–3.

will invest at least 80% of such Portfolio's net assets in equity securities.

(9) Neither the Funds nor the Portfolios will invest in options contracts, futures contracts, or swap agreements.

(10) A Portfolio will enter into TBA transactions only with established counterparties (such as major broker-dealers) and the Adviser will monitor the creditworthiness of such counterparties.

(11) Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged or inverse leveraged ETFs (*e.g.,* 2X or 3X).

(12) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [33] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–NYSEArca–2014–11) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06760 Filed 3–26–14; 8:45 am]

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[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71764; File No. SR–CBOE–2014–003]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To List and Trade CBOE Short-Term Volatility Index Options

March 21, 2014.

I. Introduction

On January 27, 2014, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list options on the CBOE Short-Term Volatility Index (''VXST''). The proposed rule change was published for comment in the **Federal Register** on February 6, 2014.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade A.M. cash-settled, European-style options on the VXST, which will expire every week. According to the Exchange, VXST is designed to measure investors' consensus view of future (nine day) expected stock market volatility, and VXST options will trade alongside the existing CBOE Volatility Index (''VIX'') options (which expire on a monthly basis and measure a 30 day period of implied volatility).[4] The Exchange states that the calculation of VXST is based on the VIX methodology as applied to option series on the S&P 500 index that expire on every Friday.[5] The constituent S&P 500 index options that expire on a Friday (*i.e.,* nine days from the VXST option expiration date, which is typically a Wednesday in the preceding week) may include the following types of options on the S&P 500 index: Standard monthly options, End-of-Week (''EOW'') expirations, and Quarterly Index (''QIX'') expirations. According to the Exchange, because some of the constituent options used to calculate VXST are A.M.-settled and some are P.M.-settled, the amount of time covered by a specific contract will vary slightly depending on the type of series used for any given A.M.-settled VXST option.[6]

Similar to VIX and VIX options, the cash (spot) VXST value will be calculated using premium quotations and the exercise settlement value for VXST options will be calculated using the actual opening premium prices of the constituent S&P 500 index options on the expiration day of the VXST option.[7] The Exchange will compute values for VXST on a real-time basis throughout each trading day, from approximately 8:30 a.m. (Chicago time) until approximately 3:15 p.m. (Chicago time).[8] VXST levels will be calculated by CBOE and generally disseminated at 15-second intervals to major market data vendors.[9] The trading hours for VXST options will be from 8:30 a.m. to 3:15 p.m. (Chicago time).[10]

The Exchange proposes to list up to 12 near-term VXST option expiration weeks, and that new series will be permitted to be added up to and including on the last day of trading for an expiring VXST option contract.[11]

As proposed, the exercise settlement value for a VXST option will be calculated on the specific date (usually a Wednesday) identified in the option symbol for the series.[12] If that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71458 (January 31, 2014), 79 FR 7239 (''Notice'').

[4] According to the Exchange, the VXST index was introduced by CBOE on October 1, 2013 and has been disseminated at least once a day on every trading day since that time. *See* Notice, *supra* note 3, at 7239–40.

[5] The Exchange states that VXST is calculated in the same manner as other volatility indexes (*e.g.,* VIX). A more detailed explanation of the method used to calculate the VIX may be found on the CBOE's Web site at *http://www.cboe.com/micro/vix/vixwhite.pdf. See* Notice, *supra* note 3, at 7240.

[6] For a VXST option contract calculated using A.M.-settled standard S&P 500 index options, the period of implied volatility covered by the contract will be exactly nine days. For a VXST option contract calculated using P.M.-settled EOW or QIX on the S&P 500 index, the period of implied volatility covered by the contract will be nine days, plus 390 minutes. *See* Notice, *supra* note 3, at 7240.

[7] *See id.*

[8] *See id.*

[9] According to the Exchange, when VIX options and VXST options expire on the same day, as the calculator of volatility indexes, CBOE would not begin disseminating the spot (cash) values for any volatility index that CBOE calculates until the S&P 500 index option series that CBOE will use to calculate the exercise settlement value for VIX options have opened. On all other VXST option expiration days, as the calculator of volatility indexes, CBOE would not begin disseminating the spot (cash) values for any volatility index that CBOE calculates until the S&P 500 index option series that CBOE will use to calculate the exercise settlement value for VXST options have opened. *See id.,* at n. 8.

[10] *See id.,* at 7241.

[11] *See* CBOE Rules 24.9(a)(2) and 24.9.01(c).

[12] *See* CBOE Rule 24.9(a)(6). According to the Exchange, option symbols are constructed as follows: Symbol + Expiration Date (Year, Month, Day) + Call or Put + Strike Price (in dollars to three decimal places). *See* Notice, *supra* note 3, at n. 14.

Wednesday or the Friday in the business week following that Wednesday (*i.e.,* nine days away) is an Exchange holiday, the exercise settlement value will be calculated on the business day immediately preceding the Wednesday.[13] According to the Exchange, on the day the exercise settlement value is calculated for VXST options, modified Hybrid Opening System (''HOSS'') opening procedures will be used to calculate the exercise settlement value.[14] The exercise settlement value of a VXST option will be calculated by the Exchange as a Special Opening Quotation (''SOQ'') of VXST using the sequence of opening prices of the options that comprise the VXST index.[15] The opening price for any series in which there is no trade will be the average of that option's bid price and ask price as determined at the opening of trading.[16] The ''time to expiration'' used to calculate the SOQ will account for the actual number of days and minutes until expiration for the constituent option series.[17]

The expiration date of a VXST option will be on the same day that the exercise settlement value of the VXST option is calculated.[18] The last trading day for a VXST option will be the business day immediately preceding the expiration date of the VXST option (typically a Tuesday).[19] When the last trading day is moved because of an Exchange holiday, the last trading day for an expiring VXST option contract will be the day immediately preceding the last regularly scheduled trading day.[20] Exercise will result in delivery of cash on the business day following expiration. The exercise-settlement amount will be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by $100.

As proposed, VXST options will be quoted in index points and fractions and one point will equal $100.[21] The Exchange proposes that the minimum tick size for series trading below $3 will be 0.05 ($5.00) and above $3 will be 0.10 ($10.00).[22] The Exchange proposes to permit $0.50 (or greater) strike price intervals for VXST options where the strike price is less than $75. The Exchange also proposes to permit $1 (or greater) strike price intervals for VXST options where the strike price is $200 or less. Further, the Exchange proposes to permit $5 (or greater) strike price intervals for VXST options where the strike price is greater than $200.[23]

The Exchange does not propose to establish any position or exercise limits for VXST options.[24] In addition, the Exchange proposes that VXST options be margined as ''broad-based index'' options.[25] The Exchange notes that, except as modified by this proposed rule change, Chapters I through XIX and Chapter XXIV of its rules will apply to VXST options.[26]

The Exchange states that it has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing of new series that will result from the introduction of VXST options.[27]

The Exchange represents that it will use the same surveillance procedures currently utilized for its other index options to monitor trading in VXST options, as well as enhanced surveillance procedures at expiration, several of which would be automated.[28] The Exchange further represents that these surveillance procedures will be adequate to monitor trading in VXST options.[29] The Exchange states that, for surveillance purposes, it will have complete access to information regarding trading activity in the pertinent underlying securities.[30]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[31] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[32] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Commission believes that VXST options will provide investors with an additional trading and hedging mechanism. In addition, the Commission believes that the Exchange's proposal with respect to position limits, margin, strike price intervals, minimum trading increments, series openings, exercise limits, and other aspects of the proposed rule change are appropriate and consistent with the Act.

As a national securities exchange, the Exchange is required, under Section 6(b)(1) of the Act,[33] to enforce compliance by its members and persons associated with its members with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In this regard, the Commission notes that trading of VXST options will be subject to Chapters I through XIX and Chapter XXIV of CBOE rules.[34] Moreover, the Exchange has represented that it will use the same surveillance procedures currently utilized for its other index options to monitor trading in VXST options, as well as enhanced surveillance procedures at expiration, several of which would be automated.[35] The Exchange has represented that these surveillance procedures will be adequate to monitor trading in VXST options.[36] The Exchange also stated that it will have complete access to information regarding trading activity in the pertinent underlying securities.[37] In approving the proposed listing and trading of the VXST options, the Commission has also relied on the Exchange's representation that it and the OPRA have the necessary systems

[13] *See* CBOE Rule 24.9(a)(6).

[14] *See* CBOE Rules 6.2B.01 and 6.2B.08. The Exchange states that the main feature of the modified HOSS opening procedures is the strategy order cut-off time for the constituent option series that will be used to calculate the exercise settlement value of a volatility index. *See* Notice, *supra* note 3, at n. 15.

[15] *See* CBOE Rule 24.9(a)(6).

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See* Notice, *supra* note 3, at 7240.

[22] *See id.,* at 7240–41.

[23] *See* CBOE Rules 5.5.23 and 24.9.01(i). The Exchange also proposes to make a technical change to CBOE Rule 24.9.12, which permits $0.50 and $1 strike price intervals for index options used to calculate volatility indexes. Specifically, the Exchange notes that it proposes to add ''and $150'' to the rule text as those two words were inadvertently omitted from the proposed rule text changes to Rule 24.9.12 contained in original rule filing, but were described in detail in the purpose section. *See* Notice, *supra* note 3, at 7241 and n. 13.

[24] *See* CBOE Rules 24.4(a) and 24.5. According to the Exchange, VXST options will be subject to the same reporting requirements triggered for other options dealt in on the Exchange. *See* Notice, *supra* note 3, at 7242 and CBOE Rule 24.4.03.

[25] *See* CBOE Rules 12.3 and 24.4.04.

[26] *See* Notice, *supra* note 3, at 7242.

[27] *See id.*

[28] *See id.*

[29] *See id.*

[30] *See id.*

[31] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78f(b)(1).

[34] *See supra* note 26 and accompanying text.

[35] *See supra* note 28 and accompanying text.

[36] *See supra* note 29 and accompanying text.

[37] *See supra* note 30 and accompanying text.

capacity to handle the additional traffic associated with the listing of new series that will result from the introduction of VXST options.[38]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change (SR–CBOE–2014–003) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06758 Filed 3–26–14; 8:45 am]

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[38] *See supra* note 27 and accompanying text.

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71769; File No. SR–OCC–2014–05]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect the Elimination of a Discount to OCC's Clearing Fee Schedule

March 21, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 21, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend its Schedule of Fees, effective April 1, 2014, to reflect the elimination of a discount to OCC's clearing fee schedule.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend OCC's Schedule of Fees to reinstate the permanent reduced fee schedule adopted, effective May 1, 2007, for securities options and securities futures.[5] In conjunction with adopting this permanent reduced fee schedule, OCC simultaneously discounted the permanent schedule. Effective January 1, 2008, OCC replaced the May 1, 2007, discounted schedule[6] with the discount remaining in effect until further action of by the Board. Implementation of this schedule was premised on the discounts not adversely affecting OCC's ability to meet its expenses and maintain an acceptable level of retained earnings. Article IX, Section 9 of OCC's By-Laws permits OCC to establish a fee structure to cover operating expenses, to maintain reserves as are deemed reasonably necessary by the Board to provide facilities for the conduct of OCC's business and to accumulate such additional surplus as the Board deems advisable to allow OCC to meet its obligations to clearing members and the general public.

OCC has determined to reinstate its permanent reduced fee schedule. OCC's revenues principally are derived from clearing fees charged to clearing members and OCC's current and projected operating expenses have increased due to current and anticipated regulatory requirements.[7] These requirements include those proposed by the Commission at its meeting on March 12, 2014, requiring OCC to be in a position to cover potential general business losses so that it can continue operations if those losses materialize.[8] OCC's current and anticipated operating expenses have also increased as a result of costs associated with the engagement of outside professionals to address various regulatory issues arising under the Dodd-Frank Act, notably additional expectations and requirements arising from OCC's status as a Systemically Important Financial Market Utility (''SIFMU''), and OCC's assessment of and compliance with international standards applicable to clearing agencies. Employee costs additionally are expected to rise further in 2014 as resources are enhanced to meet current and anticipated regulatory obligations, including increased requirements to produce data, analysis and information to the Commission in connection with its exercise of its supervisory authority over OCC.

As noted above, the Board unanimously determined to reinstate the permanent reduced fee schedule to compensate for these increased expenses. In making this determination, the Board carefully considered the requirements of Article IX, Section 9 of OCC's By-Laws as well as the expectations and obligations imposed upon OCC as a SIFMU in the national system for clearance and settlement. The Board further evaluated the potential for a refund of clearing fees in 2014. While no affirmative decision has been made by the Board regarding such refund, the Board recognized that OCC's current funding, reserve and surplus needs might result in refunds, if any, which are significantly lower in 2014 than in past years.[9] OCC will monitor the impact of returning to the permanent reduced fee schedule as well as OCC's needs to evaluate whether additional action should be taken. For example, changes in revenues as a result of significant fluctuations in cleared volume (upwards or downwards) may

[5] *See* Exchange Act Release No. 34–55709 (May 4, 2007), 72 FR 26669 (May 10, 2007) (SR–OCC–2007–05). This schedule is applied to futures and futures options as well.

[6] *See* Exchange Act Release No. 34–57192 (January 24, 2008), 73 FR 5618 (January 30, 2008) (SR–OCC–2007–17).

[7] *See* Statements of Income and Comprehensive Income in OCC's 2013 Annual Report available on OCC's Web site, *www.theocc.com.* In 2013, clearing fees represented over 90% of OCC's total revenues. Between 2012 and 2013, OCC annual expenses increased by approximately 9%. OCC's currently projects a greater increase in expenses in 2014.

[8] *See* Exchange Act Release No. 34–71699 (March 12, 2014). OCC anticipates that these requirements will need to be met by the end of 2014. The determination to reinstate the permanent reduced fee schedule was based on an analysis of such requirements and such reinstatement being effective April 1, 2014. Implementation thereafter potentially could have required an increase in the fees beyond the reinstatement of the permanent reduced fee schedule.

[9] *See* OCC's 2013 Annual Report, Footnote 8 to the Notes to the Financial Statements for a description of recent past refunds. Footnote 8 further discusses that OCC's Board sets clearing fees and determines the amounts of refunds, fee reductions and discounts, if any, based upon OCC's current funding needs.

prompt a re-assessment of the fee schedule (downwards or upwards). Cleared volumes also will be evaluated in connection with considering potential refunds for 2014.

The impact of the costs to comply with the new regulatory requirements and reinstate the permanent reduced fee schedule and the potential effect on a 2014 refund, if any, was discussed with each of the clearing members that would be most affected by these changes, most of which are represented on the Board. The vote of the Board to approve this filing included the affirmative votes of the six Member Directors present at the meeting.

The following chart sets forth the revised clearing fee schedule.

Contracts/trade	Current discounted fee schedule	Standard fee schedule (effective April 1, 2014)
1–500	$0.03/contract	$0.05/contract
501–1,000	0.024/contract	0.04/contract
1,001–2,000	18.00/trade	0.03/contract
>2,000	18.00/trade	55.00/trade
Market Maker/Specialist Scratch per side	0.01	0.02

OCC published an Information Memo on March 10, 2014, to all of its clearing members and exchanges notifying them of the changes to the Schedule of Fees that would become effective as of April 1, 2014, [10] and a second Information Memo on March 13, 2014, notifying them of the likely effects on the refunds for 2014. The Information Memos informed clearing members and exchanges that due to current and projected increases in operating expenses related to regulatory requirements, OCC would reinstate the permanent reduced clearing fee schedule adopted May 1, 2007, and that refunds based on 2014 cleared volume are likely to be significantly lower in 2014 as a result of the new regulatory expectations and requirements, but that it was expected that such impacts should not extend beyond 2014 based on current projections.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(D) [11] of the Act, because by eliminating a discount but otherwise leaving the current clearing fee schedule intact, OCC will continue to equitably allocate fees among its clearing members and other market participants. OCC also believes that the proposed rule change is consistent with Rule 17Ad–22(d)(9) [12] because the fee schedule amended by this rule change is publicly available and therefore provides clearing members and other market participants with sufficient information to allow them to identify and evaluate the costs associated with OCC's services. The proposed rule change is not inconsistent with the existing rules of the OCC including any other rules proposed to be amended.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[13]

Changes to the rules of a clearing agency may have an impact on the participants in a clearing agency, their customers, and the markets that the clearing agency serves. This proposed rule change primarily affects such users and OCC believes that the proposed modifications would not disadvantage or favor any particular user in relationship to another user because the discount is being eliminated for, and the clearing fees apply equally to, all users of OCC's services.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) [14] and Rule 19b–4(f)(2),[15] the proposed rule change is filed for immediate effectiveness inasmuch as it pertains to fees charged to OCC clearing members. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule 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.[16]

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–OCC–2014–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2014–05. This file number should be included on the

[10] OCC has represented that notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this rule change is deemed certified under CFTC Regulation § 40.6.

[11] 15 U.S.C. 78q–1(b)(3)(D).

[12] 17 CFR 240.17Ad–22(d)(9).

[13] 15 U.S.C. 78q–1(b)(3)(I).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. 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 Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_05.pdf.*

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–OCC–2014–05 and should be submitted on or before April 17, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71765; File No. SR–ISE–2014–17]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

March 21, 2014.

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 March 7, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend the Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees as described in more detail below. The fee changes discussed apply to both Standard Options and Mini Options traded on Exchange. The Exchange's Schedule of Fees has separate tables for fees applicable to Standard Options and Mini Options. The Exchange notes that while the discussion below relates to fees for Standard Options, the fees for Mini Options, which are not discussed below, are and shall continue to be 1/10th of the fees for Standard Options.

1. Market Maker Plus Rebate for Select Symbols

In order to promote and encourage liquidity in symbols that are in the penny pilot program (''Select Symbols''), the Exchange currently offers Market Makers[3] that meet the quoting requirements for Market Maker Plus[4] a rebate of $0.10 per contract for adding liquidity in those symbols. In addition, the Exchange pays a higher rebate of $0.12 per contract to Market Makers that meet the quoting requirements for Market Maker Plus and are affiliated with an Electronic Access Member (''EAM'') that executes a total affiliated Priority Customer[5] average daily volume (''ADV'') of 200,000 contracts or more in a calendar month.[6] The Exchange now proposes to increase the Market Maker Plus rebate to $0.20 per contract, and $0.22 per contract for Members that currently qualify for the higher rebate based on affiliated Priority Customer volume. The Exchange also proposes to modify the requirements for Market Maker Plus to only look to all expirations in the front two months,[7] and to reduce the premium requirements for series on which the Market Maker Plus calculations are based.[8] As proposed, a Market Maker

[3] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[4] A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer at least 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and at least 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium for all expiration months in that symbol during the current trading month. A Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.

[5] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[6] *See* Securities Exchange Act Release No. 70872 (November 14, 2013), 78 FR 69718 (November 20, 2013) (SR–ISE–2013–57).

[7] Currently, a Market Maker qualifies for Market Maker Plus if it is on the NBBO a specified percentage of the time in each of the front two expiration months, and separately for all expiration months in that symbol during the current trading month. *See* supra note 2.

[8] The Exchange currently determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics per symbol during that month. The Exchange will continue to monitor each Market Maker's quoting statistics to determine whether a Market Maker qualifies for a rebate under the standards proposed herein. The Exchange also currently provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are

will qualify for Market Maker Plus rebates if it is on the National Best Bid or National Best Offer at least 80% of the time for series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months. As is currently the case, a Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for Market Maker Plus, if doing so will qualify a Market Maker for the rebate.

2. Taker Fee for Select Symbols

The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in Select Symbols. For regular orders that remove liquidity in Select Symbols, the Exchange currently charges a taker fee of: (i) $0.34 per contract for Market Maker and Market Maker Plus orders, (ii) $0.38 per contract for Non-ISE Market Maker orders,[9] (iii) $0.35 per contract for Firm Proprietary/Broker-Dealer [10] and Professional Customer orders,[11] and (iv) $0.32 per contract for Priority Customer orders.

The Exchange now proposes to decrease the taker fee for Priority Customer orders and increase the taker fee for other market participant types. In particular, the Exchange proposes to decrease the taker fee for Priority Customer orders in Select Symbols to $0.25 per contract. For Market Maker and Market Maker Plus orders in Select Symbols the Exchange proposes to increase the taker fee to $0.42 per contract. And for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders the Exchange proposes to increase the taker fee to $0.45 per contract.

3. Responses to Crossing Orders

The Exchange charges a fee for responses to Crossing Orders [12] for regular and complex orders in Select and Non-Select Symbols as well as for Foreign Currency (''FX'') Option Symbols. For Crossing Orders in Select Symbols this response fee is a uniform $0.40 per contract for regular orders, and $0.44 per contract for complex orders. For regular orders in Non-Select Symbols and FX Option Symbols the response fee is $0.22 per contract for Market Maker orders (subject to applicable tier discounts),[13] $0.20 per contract for Market Maker orders sent by an EAM, $0.45 per contract for Non-ISE Market Maker orders, and $0.30 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders. Early Adopter Market Makers do not pay a response fee in Early Adopter FX Option Symbols.[14] For Priority Customer orders the response fee is $0.20 per contract for regular orders in Non-Select Symbols,[15] and $0.40 per contract for regular orders in FX Option Symbols, including the Early Adopter Symbols. For complex orders in Non-Select Symbols the response fee is $0.87 per contract for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders.[16] Priority Customers are not currently charged a fee for responses to complex Crossing Orders in Non-Select Symbols.

The Exchange proposes to increase the fee for responses to Crossing Orders as follows. For regular orders in Select Symbols, Non-Select Symbols, and FX Options Symbols, as well as complex orders in Select Symbols, the fee for responses to Crossing Orders will be increased to $0.45 per contract for all market participants,[17] except that Early Adopter Market Makers will continue to pay no response fee in Early Adopter FX Option Symbols. For complex orders in Non-Select Symbols the fee for responses to Crossing Orders will be $0.90 per contract for Market Maker orders and $0.95 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer, and Priority Customer orders.

4. PIM Fees and Break-up Rebate

Currently, the Exchange charges a fee for Crossing Orders which applies to regular and complex orders executed in the ISE's Facilitation, Solicited Order, Block Order, or Price Improvement Mechanism (''PIM''), or submitted as a Qualified Contingent Cross (''QCC'') order.[18] This fee applies to Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders in regular and complex orders in Select and Non-Select Symbols, as well as FX Option Symbols,[19] and to regular Priority Customer orders in singly listed Non-Select Symbols and FX Option Symbols only. For Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders the fee for Crossing Orders is $0.20 per contract across all symbols for both regular and complex orders. Priority Customer orders are also charged a fee of $0.20 per contract for regular orders in singly listed Non-Select Symbols, but pay a higher fee of $0.40 per contract in Early Adopter and other FX Option Symbols. Priority Customer orders do not pay a fee for regular Crossing Orders in Select Symbols or multiply listed Non-Select Symbols, or for complex orders. Market Maker orders pay a fee of $0.20 per contract for regular orders in Select Symbols,[20] and in both Non-Select and FX Option Symbols for orders sent by an EAM, as well as in complex orders. Regular Market Maker orders in Non-Select and FX Option Symbols that are not sent by an EAM are charged a fee of $0.22 per contract, subject to

meeting the Exchange's current stated criteria. Again, the Exchange will continue to provide Market Makers a daily report so that Market Makers can track their quoting activity to determine whether or not they qualify for the Market Maker Plus rebate.

[9] A ''Non-ISE Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

[10] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account. A ''Broker-Dealer'' order is an order submitted by a member for a non-member broker-dealer account.

[11] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer.

[12] A ''Crossing Order'' is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (''PIM'') or submitted as a Qualified Contingent Cross (''QCC'') order. For purposes of the Fee Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

[13] *See* Schedule of Fees, Section VI.C for applicable tier discounts.

[14] An Early Adopter Market Maker is a Market Maker that entered into a revenue sharing agreement with the Exchange on or before March 30, 2012 to make markets in Early Adopter FX Option Symbols.

[15] This fee applies to both singly and multiply listed options in Non-Select Symbols.

[16] Complex order fees and rebates for Non-Select Symbols in Section II of the Schedule of Fees apply for complex orders in FX Option Symbols. Currently, the Schedule of Fees notes that ''Complex Order fees and rebates in Section II apply for FX Option Symbols.'' As this language is somewhat ambiguous, the Exchange proposes to modify it to state that ''Complex Order fees and rebates *for Non-Select Symbols* in Section II apply for FX Option Symbols.''

[17] Under the proposed fee structure Market Maker responses to Crossing Orders in Non-Select Symbols and FX Option Symbols will not be eligible for the current tier discounts provided under Section VI.C of the Schedule of Fees.

[18] For complex orders the Exchange currently only charges the largest leg.

[19] Complex order fees and rebates for Non-Select Symbols in Section II of the Schedule of Fees apply for complex orders in FX Option Symbols.

[20] This fee applies to both Market Makers and Market Maker Plus.

applicable tier discounts.[21] Early Adopter Market Makers are not charged a fee for Crossing Orders in Early Adopter FX Options symbols.

The Exchange now proposes to adopt separate fees for PIM orders that meet specified size requirements. In particular, the Exchange proposes to charge a fee of $0.05 per contract for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders for one hundred or fewer contracts executed in the PIM. For complex orders, the quantity of the largest leg will be used to determine if the order meets the size requirement for the reduced fee. While currently only the largest leg of a complex Crossing Order is charged a fee, however, the new proposed fee for complex PIM orders will apply to all legs. For example, a Broker-Dealer complex PIM order containing three option legs of 10 contracts each will be assessed a fee equal to the total number of Broker-Dealer contracts (3 legs × 10 contracts each) multiplied by $0.05. For Members that execute an average daily volume (''ADV'') in Priority Customer PIM orders of 20,000 or more contracts in a given month, the fee for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders will be reduced further to $0.03 per contract, which will be applied retroactively to all eligible PIM volume in that month once the threshold has been reached.[22] As is currently the case, Priority Customer orders will not pay a fee for regular orders in Select Symbols, multiply listed Non-Select Symbols, or for complex orders, and Early Adopter Market Makers will not pay a fee in Early Adopter FX Options Symbols, for orders executed in the PIM. The Exchange will continue to charge regular Priority Customer orders in singly listed Non-Select Symbols and FX Option Symbols (including Early Adopter FX Option Symbols) at the applicable rate for Crossing Orders. Fees for PIM orders of greater than 100 contracts, as well as orders executed in the Exchange's other crossing mechanisms, will also remain at their current rates but fees for PIM orders of greater than 100 contracts, like the fees for a PIM order of 100 or fewer contracts, will now be charged for all legs.

For regular and complex PIM orders in Select Symbols that do not trade with their contra order, the Exchange currently provides a break-up rebate of $0.25 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer, and Priority Customer orders in Select Symbols.[23] The Exchange proposes to increase this rebate to $0.35 per contract. In addition, the Exchange proposes to introduce a new break-up rebate for regular and complex orders in Non-Select Symbols and in FX Option Symbols executed in the PIM by the above listed market participants. This rebate will be $0.15 per contract for regular orders in Non-Select Symbols and in FX Option Symbols, and $0.80 per contract for complex orders in Non-Select Symbols.[24] Market Makers are not permitted to enter orders into PIM and will therefore not be eligible for this rebate.

5. Priority Customer Complex Order Tiers

The Exchange currently provides volume-based tiered rebates for Priority Customer complex orders when these orders trade with non-Priority Customer orders in the complex order book,[25] or trade with quotes and orders on the regular order book.[26] These complex order rebates are provided to Members based on the Member's ADV in Priority Customer complex contracts in six volume tiers as follows: 0 to 39,999 (Tier 1), 40,000 to 74,999 (Tier 2), 75,000 to 124,999 (Tier 3), 125,000 to 224,999 (Tier 4), 225,000 to 299,999 (Tier 5), 300,000 or more (Tier 6). A Member that executes an ADV of 40,000 to 74,999 Priority Customer complex contracts (i.e., Tier 2) is entitled to a rebate of $0.37 per contract for Select Symbols (excluding SPY), $0.40 per contract for SPY, and $0.75 per contract for non-Select Symbols, in each case when trading with non-Priority Customer orders in the complex order book. When trading against quotes and orders on the regular order book this rebate is $0.14 per contract for all symbols (excluding SPY), and $0.15 per contract for SPY.

The Exchange now proposes to decrease the volume requirements necessary for achieving Tier 2 Priority Customer complex order rebates. As proposed, a Member that executes an ADV of 30,000 to 74,999 Priority Customer complex contracts will now be entitled to the Tier 2 rebates described above. Members that execute an ADV of 0 to 29,999 Priority Customer complex contracts will continue to receive Tier 1 rebates. By decreasing the lower ADV threshold for Tier 2 from 40,000 contracts to 30,000 contracts the Exchange expects to attract additional Priority Customer complex order volume to the ISE.

In addition, the Exchange proposes to delete outdated footnote references to an incremental tier for Priority Customer complex volume that was recently replaced with a new tier that applies retroactively to all Priority Customer complex volume.[27]

6. Credit for Responses to Flash Orders

Currently, when the ISE is not at the National Best Bid or Offer (''NBBO''), Public Customer[28] and Non-Customer[29] orders are exposed to all ISE members to give them an opportunity to match the NBBO (''Flash Orders'') before the order is routed to another exchange for execution or is cancelled.[30] As an incentive to attract Public Customer orders to the ISE, the Exchange offers a Credit for Responses to Flash Orders when trading against Priority and Professional Customer orders.[31] In Select Symbols, this credit is $0.10 per contract when trading against Priority or Professional Customer orders or $0.12 per contract when trading against Preferenced Priority Customer orders.[32] In non-Select Symbols the credit is $0.20 per contract when trading against Professional Customer orders only. The Exchange now proposes to decrease the Credit for Responses to Flash Orders to $0.05 per contract when trading against

[21] *See* Schedule of Fees, Section VI.C for applicable tier discounts.

[22] Under the proposed fee structure Market Maker PIM orders of 100 or fewer contracts in Non-Select Symbols and FX Option Symbols will not be eligible for the current tier discounts provided under Section VI.C of the Schedule of Fees.

[23] The fee for Crossing Orders is applied to any contracts for which a rebate is provided.

[24] The applicable fee is applied to any contracts for which a rebate is provided.

[25] The Exchange offers a rebate in Standard and Mini Options for Priority Customer complex orders in (i) Select Symbols (excluding SPY), (ii) SPY, and (iii) non-Select Symbols, when these orders trade with non-Priority Customer orders in the complex order book.

[26] The Exchange offers a rebate in Standard and Mini Options for Priority Customer complex orders that trade with quotes and orders on the regular order book in (i) SPY, and (ii) other symbols excluding SPY.

[27] *See* Exchange Act Release No. 70873 (November 14, 2013), 78 FR 69714 (November 20, 2013) (SR–ISE–2013–56).

[28] The term ''Public Customer'' means a person or entity that is not a broker or dealer in securities. Public Customers include both Priority and Professional Customers.

[29] The term ''Non-Customer'' means a person or entity that is a broker or dealer in securities.

[30] A ''Flash Order'' is an order that is exposed at the NBBO by the Exchange to all members for execution, as provided under Supplementary Material .02 to ISE Rule 1901.

[31] No fee is charged or credit provided when trading against a non-Customer.

[32] The credit for responses to Preferenced Priority Customer orders applies to an ISE Market Maker when trading against a Priority Customer order that is preferenced to that Market Maker.

Priority Customer orders in Select Symbols or Professional Customer orders in Select and Non-Select Symbols. The Exchange will no longer offer an increased credit for trading against Preferenced Priority Customer orders.

7. ISE Gemini Name Change

Finally, the Exchange notes that its sister exchange recently filed to change its name from the Topaz Exchange, LLC to ISE Gemini, LLC.[33] Certain text in the ISE Schedule of Fees references the Topaz Exchange, LLC in noting that certain fees provide connectivity to both exchanges.[34] The Exchange proposes to replace all references to the Topaz Exchange, LLC with updated references to ISE Gemini, LLC.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[35] in general, and Section 6(b)(4) of the Act,[36] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange is retooling its fees and rebates in order to remain competitive with other options exchanges and believes that each of these changes are reasonable, equitable, and not unfairly discriminatory for the reasons discussed below. The Exchange believes that taken as a whole the proposed changes, which increase certain fees in addition to providing higher rebates, will be attractive to market participants that trade on the ISE.

1. Market Maker Plus Rebate for Select Symbols

The Exchange believes that the proposed increase to the Market Maker Plus rebate is reasonable and equitable because it will encourage Market Makers to post tighter markets in Select Symbols and thereby maintain liquidity and attract additional order flow to the ISE, which will ultimately benefit all market participants that trade on the Exchange. The Market Maker Plus rebate is competitive with incentives provided by other exchanges, and has proven to be an effective incentive for Market Makers to provide liquidity in Select Symbols. The Exchange believes that the proposed Market Maker Plus rebate is reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange. The Exchange also believes that the new Market Maker Plus rebate is not unfairly discriminatory because all Market Makers can achieve the higher rebates by satisfying the applicable Market Maker Plus requirements. Furthermore, the Exchange believes that the proposed changes to qualification requirements are reasonable, equitable, and not unfairly discriminatory as they are designed to focus attention on tighter quoting by Market Makers in the front two expiration months, and to a smaller subset of series trading within the proposed premium parameters, where the majority of trading volume occurs. The Exchange believes that these changes will encourage higher participation in the Market Maker Plus program, while still incentivizing market makers to post tighter markets in the series identified above.

2. Taker Fee for Select Symbols

The Exchange believes that its proposal to decrease the taker fee for Priority Customer orders, and to increase the taker fee for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders in Select Symbols is reasonable and equitable because the proposed fees are within the range of fees assessed by other exchanges employing similar pricing schemes. While the Exchange is proposing a fee increase for certain market participants, the proposed fees are lower, for example, than the fee for removing liquidity currently charged by the NASDAQ Options Market (''NOM''), which ranges from $0.47 per contract to $0.49 per contract in penny pilot symbols.[37]

The Exchange notes that with this proposed fee change, the fee charged to Priority Customer orders will remain lower (as it historically has always been) than the fee charged to other market participants, including Professional Customers. The Exchange believes that it is equitable and not unfairly discriminatory to charge a lower fee for Priority Customer orders than Professional Customer orders as a Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. The Exchange believes that attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE.

3. Responses to Crossing Orders

The Exchange believes that the proposed increase to fees for responses to Crossing Orders is reasonable, equitable, and not unfairly discriminatory. As proposed, the response fee will now be uniform for regular orders in Select and Non-Select Symbols, as well as FX Options Symbols, across all market participant types. As is currently the case, the Exchange will continue to charge a higher fee for responses to complex Crossing Orders in Non-Select symbols, which reflects the higher fees generally charged for complex orders in these symbols. The Exchange notes that Priority Customers will now pay a fee for responses to complex Crossing Orders in Non-Select Symbols, eliminating an incentive previously provided to Priority Customer orders in those symbols. The Exchange believes that this proposed change is reasonable, equitable, and not unfairly discriminatory as the response fee for complex Crossing Orders executed for Priority Customers in Non-Select Symbols will now be in line with the fees charged to other market participants, as is the case currently in Select Symbols. Furthermore, while Market Makers will be entitled to a lower response fee than other market participants for complex Crossing Orders in Non-Select Symbols, the Exchange believes that this is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). The Exchange believes that it is equitable and not unfairly discriminatory to charge higher fees to market participants that do not have the requirements and obligations that Market Makers do.

4. PIM Fees and Break-up Rebate

The Exchange believes that the proposed changes to PIM fees and the break-up rebate are reasonable, equitable, and not unfairly discriminatory. By increasing the break-up rebate provided for contracts that are submitted to PIM that do not trade with their contra order, and lowering fees for

[33] *See* Exchange Act Release No. 71586 (February 20, 2014), 79 FR 10861 (February 26, 2014) (SR–Topaz–2014–06).

[34] *See* Exchange Act Release No. 71324 (January 16, 2014), 79 FR 3911 (January 23, 2014) (SR–ISE–2014–01).

[35] 15 U.S.C. 78f.

[36] 15 U.S.C. 78f(b)(4).

[37] *See* NOM Rules, Chapter XV Options Pricing, Sec. 2 NASDAQ Options Market—Fees and Rebates.

PIM orders of one hundred or fewer contracts, the fee change is designed to encourage Members to execute this order flow in the PIM rather than on competing exchanges. In connection with this proposed change, the Exchange believes that it is reasonable and equitable to provide a significantly higher break-up rebate for complex PIM orders in Non-Select symbols, which reflects the higher level of fees and rebates generally offered for complex orders in these symbols. While the Exchange will now charge for all legs of complex PIM orders, the Exchange believes that market participants will benefit from lower overall fees for their PIM trades. In addition, providing a further discount to Members that execute a higher ADV of Priority Customer PIM orders will encourage Members to send additional order flow to the ISE in order to qualify for the reduced fees. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Priority Customer orders on the Exchange are generally entitled to lower or no fees as the Exchange believes that attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE.

5. Priority Customer Complex Order Tiers

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to decrease the volume requirements necessary for achieving Tier 2 Priority Customer complex order rebates as this proposed change is designed to attract additional Priority Customer complex order volume to the ISE. The Exchange already provides volume-based tiered rebates for Priority Customer complex orders, and believes that lowering the volume threshold for the second tier of complex order rebates will incentivize Members to send additional order flow to the ISE in order to achieve the more attainable rebates for their Priority Customer complex order volume. In addition, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to delete inapplicable footnote text as this is a non-substantive change intended to reduce investor confusion.

6. Credit for Responses to Flash Orders

The Exchange believes that it is reasonable and equitable to decrease the Credit for Responses to Flash Orders as the higher credits previously offered were unsuccessful in encouraging market participants to respond to Flash Orders. The Exchange has recently experimented with higher credits,[38] and has now determined to offer a reduced incentive. In addition, the Exchange believes that the proposed change is equitable and not unfairly discriminatory as the credit provided will now be the same for all Priority Customer orders in Select Symbols and Professional Customer Orders in Select and Non-Select symbols. The Exchange does not believe that the proposed change will affect the execution quality of Public Customer orders, which, in the absence of sufficient responses, will continue to be routed to the market with the best price in accordance with the ISE's linkage handling rules.

7. ISE Gemini Name Change

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to update references to the name of its sister exchange as this is a non-substantive change. ISE Gemini, LLC, which was formerly known as the Topaz Exchange, LLC, recently filed to change its name, and the ISE believes that updating references to its sister exchange in the fee schedule will reduce investor confusion.

The Exchange notes that it has determined to charge fees and provide rebates in Mini Options at a rate that is 1/10th the rate of fees and rebates the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees and rebates are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, is providing fees and rebates for Mini Options that are 1/10th of those applicable to Standard Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[39] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change is pro-competitive as it is designed to attract additional order flow to the ISE. While the Exchange is increasing the fees for certain market participants, the Exchange does not believe that this will cause an undue burden on competition as the increased fees are still within the range of fees charged by other options exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[40] and subparagraph (f)(2) of Rule 19b–4 thereunder,[41] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[38] *See* Securities Exchange Act Release No. 70873 (November 14, 2013), 78 FR 69714 (November 20, 2013) (SR–ISE–2013–56).

[39] 15 U.S.C. 78f(b)(8).

[40] 15 U.S.C. 78s(b)(3)(A)(ii).

[41] 17 CFR 240.19b–4(f)(2).

• Send an Email to *rule-comments@sec.gov*. Please include File No. SR–ISE–2014–17 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2014–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2014–17 and should be submitted by April 17, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06759 Filed 3–26–14; 8:45 am]

BILLING CODE 8011–01–P

[42] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day Notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before April 28, 2014.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: The Small Business Administration needs to collect this information to determine an applicant's eligibility for admission into the 8(a) Business Development (BD) Program and for continued eligibility to participate in the Program. SBA also uses some of the information for an annual report to Congress on the 8(a) BD Program. Respondents can be individuals and firms making applications to the 8(a) BD Program, or respondents can be individuals and Participant firms revising information related to the 8(a) BD Program Annual Review.

Summary of Information Collections

(1) *Title:* 8(A) SDB Paper and Electronic Application.

Description of Respondents: 8(A) SDB Participants.

Form Numbers: 1010, ANC, NHO, IND, AIT and C.

Estimated Annual Responses: 11,364.

Estimated Annual Hour Burden: 45,745.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2014–06795 Filed 3–26–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day Notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before April 28, 2014.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: To obtain the information needed to carry out its program evaluation and oversight responsibilities. SBA requires small business investment companies (SBIC'S) to provide information on SBA Form 1031 each time financing is extended to a small business concern. SBA uses this information to evaluate how SBIC'S fill market financing gaps and contribute to economic growth, and to monitor the regulatory compliance of individual SBIC'S.

Summary of Information Collections

(1) *Title:* Portfolio Financing Report.

Description of Respondents: Small Business Investment Companies.

Form Number: 1031.

Estimated Annual Responses: 2,800.

Estimated Annual Hour Burden: 560.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2014–06794 Filed 3–26–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day Notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before April 28, 2014.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: Small Business owners or advocate who have been nominated for an SBA recognition award submit this information for use in evaluating nominees eligibility for an award: Verifying accuracy of information submitted, and determining whether there are any actual or potential conflicts of interest. Awards are presented to winners during the Presidentially declared Small Business Week.

Summary of Information Collections

(1) *Title:* Small Business Administration Award Nomination.

Description of Respondents: Small Business Owners and Advocates who have been nominated for an SBA recognition award.

Form Number: 3300.

Estimated Annual Responses: 600.

Estimated Annual Hour Burden: 1,200.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2014–06793 Filed 3–26–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day Notice

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before April 28, 2014.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: To obtain the information needed to carry out its oversight responsibilities under the Small Business Investment Act, the Small Business Administration (SBA) requires Small Business Investment Companies (SBICs) to submit financial statements and supplementary information on SBA Form 468. SBA uses this information to monitor SBIC financial condition and regulatory compliance, for credit analysis when considering SBIC leverage applications, and to evaluate financial risk and economic impact for individual SBICs and the program as a whole.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

(1) *Title:* SBIC Financial Reports.

Description of Respondents: SBIC participants.

Form Number: 468.1, 468.2, 468.3 and 468.4.

Estimated Annual Responses: 1,050.

Estimated Annual Hour Burden: 26,700.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2014–06796 Filed 3–26–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–25755]

Operating Limitations At New York Laguardia Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Extension to Order.

SUMMARY: This action amends the Order Limiting Operations at New York LaGuardia Airport (LGA) that published on December 27, 2006, and was amended on November 8, 2007, August 19, 2008, October 7, 2009, April 4, 2011, May 23, 2012, and May 14, 2013. The Order remains effective until the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 29, 2016.

DATES: This amendment is effective on March 27, 2014.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this Order contact: Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–7661; fax (202) 385–7433; email *susan.pfingstler@faa.gov.*

For legal questions concerning this Order contact: Robert Hawks, Office of

the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7143; facsimile: (202) 267–7971; email: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

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

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You also may obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Background

Due to LGA's limited runway capacity, the airport cannot accommodate the number of flights that airlines and others would like to operate without causing significant congestion. The FAA has long limited the number of arrivals and departures at LGA during peak demand periods through the implementation of the High Density Rule (HDR).[1] By statute enacted in April 2000, the HDR's applicability to LGA operations terminated as of January 1, 2007.[2]

In anticipation of the HDR's expiration, the FAA proposed a long-term rule that would limit the number of scheduled and unscheduled operations at LGA.[3] The FAA issued an Order on December 27, 2006, adopting temporary limits pending the completion of the rulemaking.[4] This Order was amended on November 8, 2007, and August 19, 2008.[5] On October 10, 2008, the FAA published the Congestion Management Rule for LaGuardia Airport, which would have become effective on December 9, 2008.[6] That rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit and subsequently rescinded by the FAA.[7] The FAA further extended the December 27, 2006, Order placing temporary limits on operations at LGA, as amended, on October 7, 2009,[8] on April 4, 2011,[9] and on May 14, 2013.[10]

Under the Order, as amended, the FAA (1) maintains the current hourly limits on scheduled (71) and unscheduled (three) operations at LGA during the peak period; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations (OAs) with defined exceptions; (3) provides a mechanism for withdrawal of OAs for FAA operational reasons; (4) provides for a lottery to reallocate withdrawn, surrendered, or unallocated OAs; and (5) allows for trades and leases of OAs for consideration for the duration of the Order. The reasons for issuing the Order have not changed appreciably since it was implemented. Without the operational limitations imposed by this Order, the FAA expects severe congestion-related delays would occur at LGA and at other airports throughout the National Airspace System (NAS).

The FAA is engaged in an effort to implement a long-term rule at LGA, John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR). The FAA is developing a notice of proposed rulemaking for Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89), which currently is under review. At this time, the FAA unable to predict the date on which that rule would become effective. Accordingly, the FAA has concluded it is necessary to extend the expiration date of this Order until the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 29, 2016. This expiration date coincides with the expiration dates for the Orders limiting scheduled operations at JFK and EWR, as also amended by notices in today's **Federal Register**. No amendments other than the expiration date have been made to this Order.

The FAA finds that notice and comment procedures under 5 U.S.C. section 553(b) are impracticable and contrary to the public interest. The FAA further finds that good cause exists to make this Order effective in less than 30 days.

The Amended Order

In consideration of the foregoing, the Order, as amended, is recited below in its entirety:

A. Scheduled Operations

With respect to scheduled operations at LaGuardia:

1. The final Order governs scheduled arrivals and departures at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday. Seventy-one (71) Operating Authorizations are available per hour and will be assigned by the FAA on a 30-minute basis. The FAA will permit additional, existing operations above this threshold; however, the FAA will retire Operating Authorizations that are surrendered to the FAA, withdrawn for non-use, or unassigned during each affected hour until the number of Operating Authorizations in that hour reaches seventy-one (71).

2. The final Order takes effect on January 1, 2007, and will expire when the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 29, 2016.

3. The FAA will assign operating authority to conduct an arrival or a departure at LaGuardia during the affected hours to the air carrier that holds equivalent slot or slot exemption authority under the High Density Rule of FAA slot exemption rules as of January 1, 2007; to the primary marketing air carrier in the case of AIR–21 small hub/nonhub airport slot exemptions; or to the air carrier operating the flights as of January 1, 2007, in the case of a slot held by a non carrier. The FAA will not assign operating authority under the final Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority under 14 CFR part 121, 129 or 135. The Chief Counsel of the FAA will be the final decision maker regarding the initial assignment of Operating Authorizations.

4. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

[1] 33 FR 17896 (Dec. 3, 1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K. The HDR required carriers to hold a reservation, which came to be known as a ''slot,'' for each takeoff or landing under instrument flight rules at the high density traffic airports.

[2] Aviation Investment and Reform Act for the 21st Century (AIR–21), Public Law 106–181 (Apr. 5, 2000), 49 U.S.C. 41715(a)(2).

[3] 71 FR 51360 (August 29, 2006); Docket FAA–2006–25709. The FAA subsequently published a Supplemental Notice of Proposed Rulemaking. 73 FR 20846 (Apr. 17, 2008).

[4] 71 FR 77854.

[5] 72 FR 63224; 73 FR 48428.

[6] 73 FR 60574, amended by 73 FR 66517 (Nov. 10, 2008).

[7] 74 FR 52132 (Oct. 9, 2009).

[8] 74 FR 51653.

[9] 76 FR 18616, amended by 77 FR 30585 (May 23, 2012).

[10] 78 FR 28278.

5. An air carrier may lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of the Order. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or email *7-AWASlotadmin@faa.gov,* and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. However, the FAA will approve transfers between carriers under the same marketing control up to 5 business days after the actual operation. This post-transfer approval is limited to accommodate operational disruptions that occur on the same day of the scheduled operation.

6. Each air carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations actually operated for each day of the two-month reporting period within 14 days after the last day of the two-month reporting period beginning January 1 and every two months thereafter. Any Operating Authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA except:

A. The FAA will treat as used any Operating Authorization held by an air carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

B. The FAA will treat as used any Operating Authorization obtained by an air carrier through a lottery under paragraph 7 for the first 120 days after allocation in the lottery.

C. The Administrator of the FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the air carrier and which affects carrier operations for a period of five consecutive days or more.

7. In the event that Operating Authorizations are withdrawn for nonuse, surrendered to the FAA or are unassigned, the FAA will determine whether any of the available Operating Authorizations should be reallocated. If so, the FAA will conduct a lottery using the provisions specified under 14 CFR 93.225. The FAA may retime an Operating Authorization prior to reallocation in order to address operational needs. When the final Order expires, any Operating Authorizations reassigned under this paragraph, except those assigned to new entrants or limited incumbents, will revert to the FAA for reallocation according to the reallocation mechanism prescribed in the final rule that succeeds the final Order.

8. If the FAA determines that a reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the air carrier from which it was taken, provided that the air carrier continues to operate scheduled service at LaGuardia.

9. The FAA will enforce the final Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). An air carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, would be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in the final Order. An air carrier that is a small business as defined in the Small Business Act would be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in the final Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of the final Order.

B. Unscheduled Operations:[11]

With respect to unscheduled flight operations at LaGuardia, the FAA adopts the following:

1. The final order applies to all operators of unscheduled flights, except helicopter operations, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday.

2. The final Order takes effect on January 1, 2007, and will expire when the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 29, 2016.

3. No person can operate an aircraft other than a helicopter to or from LaGuardia unless the operator has received, for that unscheduled operation, a reservation that is assigned by the David J. Hurley Air Traffic Control System Command Center's Airport Reservation Office (ARO). Additional information on procedures for obtaining a reservation will be available via the Internet at *http://www.fly.faa.gov/ecvrs.*

4. Three (3) reservations are available per hour for unscheduled operations at LaGuardia. The ARO will assign reservations on a 30-minute basis.

5. The ARO receives and processes all reservation requests. Reservations are assigned on a ''first-come, first-served'' basis, determined as of the time that the ARO receives the request. A cancellation of any reservation that will not be used as assigned would be required.

6. Filing a request for a reservation does not constitute the filing of an instrument flight rules (IFR) flight plan, as separately required by regulation. After the reservation is obtained, an IFR flight plan can be filed. The IFR flight plan must include the reservation number in the ''remarks'' section.

7. Air Traffic Control will accommodate declared emergencies without regard to reservations. Nonemergency flights in direct support of national security, law enforcement, military aircraft operations, or public use aircraft operations will be accommodated above the reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate reservation for such flights are available via the Internet at *http://www.fly.faa.gov/ecvrs.*

8. Notwithstanding the limits in paragraph 4, if the Air Traffic Organization determines that air traffic control, weather, and capacity conditions are favorable and significant delay is not likely, the FAA can accommodate additional reservations over a specific period. Unused operating authorizations can also be temporarily made available for unscheduled operations. Reservations for additional operations are obtained through the ARO.

9. Reservations cannot be bought, sold, or leased.

[11] Unscheduled operations are operations other than those regularly conducted by an air carrier between LaGuardia and another service point. Unscheduled operations include general aviation, public aircraft, military, charter, ferry, and positioning flights. Helicopter operations are excluded from the reservation requirement. Reservations for unscheduled flights operating under visual flight rules (VFR) are granted when the aircraft receives clearance from air traffic control to land or depart LaGuardia. Reservations for unscheduled VFR flights are not included in the limits for unscheduled operators.

Issued in Washington, DC on March 21, 2014.

Marc L. Warren,

Acting Chief Counsel.

[FR Doc. 2014–06659 Filed 3–26–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Schedule Information Submission Deadline for O'Hare International Airport, San Francisco International Airport, John F. Kennedy International Airport, and Newark Liberty International Airport for the Winter 2014–2015 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of May 8, 2014, for Winter 2014–2015 flight schedules at Chicago's O'Hare International Airport (ORD), San Francisco International Airport (SFO), New York's John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) in accordance with the International Air Transport Association (IATA) Worldwide Slot Guidelines. The deadline coincides with the schedule submission deadline for the IATA Slot Conference for the Winter 2014–2015 scheduling season.

DATES: Schedules must be submitted no later than May 8, 2014.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC–200, Office of the Chief Counsel, 800 Independence Ave. SW., Washington, DC 20591; by facsimile to: 202–267–7277; or by email to: *7-AWA-slotadmin@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: 202–267–7143; fax number: 202–267–7971; email: *rob.hawks@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA has designated ORD as an IATA Level 2 airport, SFO as a Level 2 airport, JFK as a Level 3 airport, and EWR as a Level 3 airport. Scheduled operations at JFK and EWR are currently limited by FAA Orders until a final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89) becomes effective but not later than October 29, 2016.[1]

The FAA is primarily concerned about planned passenger and cargo operations during peak hours, but carriers may submit schedule plans for the entire day. At ORD, the peak hours are 0700 to 2100 Central Time (1300 to 0300 UTC), at SFO from 0600 to 2300 Pacific Time (1400 to 0700 UTC), and at EWR and JFK from 0600 to 2300 Eastern Time (1100 to 0400 UTC). Carriers should submit schedule information in sufficient detail including, at minimum, the operating carrier, flight number, scheduled time of arrival or departure, frequency, and effective dates. IATA standard schedule information format and data elements (Standard Schedules Information Manual or SSIM) may be used.

The U.S. winter scheduling season for these airports is from October 26, 2014, through March 28, 2015, in recognition of the IATA northern winter period. The FAA understands there may be differences in schedule times due to different U.S. daylight saving time dates, and the FAA will accommodate these differences to the extent possible.

Issued in Washington, DC, on March 24, 2014.

Mark W. Bury,

Assistant Chief Counsel for International Law, Legislation, and Regulations.

[FR Doc. 2014–06797 Filed 3–26–14; 8:45 am]

BILLING CODE 4910–13–P

[1] Operating Limitations at John F. Kennedy International Airport, 73 FR 3510 (Jan. 18, 2008) as amended by publication in today's **Federal Register**; Operating Limitations at Newark Liberty International Airport, 73 FR 29550 (May 21, 2008) as amended by publication in today's **Federal Register**.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Re-Evaluation With Respect to the Willits Bypass Project, Willits, CA, and the Construction of the Schmidbauer Driveway

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice announces that Federal actions taken by the California Department of Transportation (Caltrans) pursuant to its assigned responsibilities under 23 U.S.C. 327 are final within the meaning of 23 U.S.C. 139(*l*)(1). FHWA, on behalf of Caltrans, is issuing this notice to announce that, with respect to the State Route 101 Willits Bypass Project in Willits (Mendocino County), California, a Re-evaluation was prepared in order to determine whether the existing Final Environmental Impact Statement (FEIS) is still valid. Based upon the analyses contained in the Re-evaluation, Caltrans has made the determination that the existing FEIS is still valid and the preparation of a SEIS is not warranted and will therefore not be undertaken.

SUPPLEMENTARY INFORMATION: Caltrans conducted a Re-evaluation of the Final Environmental Impact Statement (FEIS) issued by FHWA in October 2006 (a Record of Decision for which was posted in the **Federal Register** in January 2007). The Re-evaluation was completed in March 2014. Due to the construction of the Haehl Creek Interchange and the Willits Bypass project, the existing access route to the Schmidbauer parcel and residence from the north that crosses through State of California access controlled right of way, cannot continue to be used. Caltrans is proposing to re-construct a new driveway segment that will provide access to the Schmidbauer parcel and residence from the Willits Bypass Haehl Creek interchange through an existing access opening.

The purpose of the Re-evaluation was to examine potential environmental impacts resulting from the proposed changes to the Willits Bypass Project and in order to determine whether the FEIS was still valid or whether a SEIS should be prepared in accordance with 40 CFR 1502.9(c). Based upon the Re-evaluation, Caltrans made the determination that preparation of a SEIS was not warranted and would not be undertaken (Caltrans made the determination in March 2014).

A claim seeking judicial review of the March 2014 Federal agency determination to not undertake a SEIS will be barred if the claim is not filed within 150 days of the initial publication of this notice in the **Federal Register**.

Copies of the Re-evaluation is available for review by appointment only at the following locations. Please call to make arrangements for viewing:

Caltrans, District 3 Office, 703 B Street, Marysville, CA 95901, 530–741–4393, and Caltrans, District 3 Office, 2379 Gateway Oaks Drive, #150, Sacramento, CA, 916–274–0586.

(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.)

FOR FURTHER INFORMATION CONTACT: John Webb, Supervisory Environmental Planner, California Department of

Transportation, 703 B Street, Marysville, CA 95901, 530–741–4393, *John_Webb@dot.ca.gov*.

Issued in Sacramento, California, March 21, 2014.

Issued on: March 20, 2014.

Gary Sweeten,

Team Leader North, Project Delivery, Federal Highway Administration, Sacramento, California.

[FR Doc. 2014–06639 Filed 3–26–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0050]

Agency Information Collection Activities; Approval of a New Information Collection Request: Lease and Interchange of Vehicles

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval, and invites public comment. This ICR will enable FMCSA to document the burden associated with the for-hire truck leasing regulations codified in 49 CFR part 376, ''Lease and Interchange of Vehicles.'' These regulations require certain for-hire motor carriers to have a formal lease when leasing equipment.

DATES: Please send your comments by April 28, 2014. OMB must receive your comments by this date in order to act on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2013–0050. 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/Federal Motor Carrier Safety Administration, 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.

FOR FURTHER INFORMATION CONTACT: Kenneth Rodgers, Chief, Commercial Enforcement and Investigations Division, Office of Enforcement and Compliance, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone: 202–366–0073; Email: *kenneth.rodgers@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Lease and Interchange of Vehicles.

OMB Control Number: 2126–XXXX.

Type of Request: New information collection.

Respondents: Motor carriers authorized by the Secretary to transport property that use leased equipment.

Estimated Number of Respondents: 32,100 for-hire motor carriers.

Estimated Time per Response: 2 hour 7 minutes [68,100 estimated annual burden hours/32,100 respondents = 2.121495327 or 2 hour 7 minutes].

Expiration Date: N/A. This is a new information collection.

Frequency of Response: One-time.

Estimated Total Annual Burden: 68,100 (16,500 carriers × 0.5 hours × 2 entities + 311,000 vehicles × 0.083 hours × 2 entities = 68,126 hours, rounded to the nearest hundred).

Background: The Secretary of Transportation (Secretary) is authorized to require a motor carrier that uses motor vehicles not owned by it to transport property under an arrangement with another party to make the arrangement in writing. This written lease agreement must specify its duration, the compensation to be paid by the motor carrier providing transportation subject to jurisdiction under 49 U.S.C. 14102(a), ''Leased Motor Vehicles'' and signed by the parties. The Secretary has delegated authority pertaining to leased motor vehicles to FMCSA pursuant to 49 CFR 1.87(a)(6). The Agency's regulations governing leased motor vehicles are at 49 CFR part 376.

The rules were adopted to ensure that small trucking companies were protected when they agreed to lease their equipment and drivers to larger for-hire carriers. They also ensure that the government and members of the public can determine who is responsible for a property-carrying commercial motor vehicle. Prior to the regulations, some equipment was leased without written agreements, leading to disputes over which party to the lease was responsible for charges and actions and, at times, who was legally responsible for the vehicle. Under 49 U.S.C. 14102(a), FMCSA ''may require a motor carrier providing for-hire transportation that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

(1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;

(2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;

(3) inspect the motor vehicles and obtain liability and cargo insurance on them; and

(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.''

The rules specify what must be covered in the lease, but leave open how many responsibilities must be divided. The parties to the lease determine numerous details between themselves.

Part 376 applies only to certain motor carriers in interstate commerce and only to certain leasing situations. The rules cover leasing between a for-hire carrier that does not hold operating authority and another for-hire carrier that does hold operating authority. A for-hire motor carrier with or without operating authority that leases its equipment and drivers to a private motor carrier is not covered by the rule. A for-hire carrier with operating authority that leases its equipment to a non- for hire motor carrier and operates under its own authority is also not covered by the rule. Private carriers that lease their equipment to for-hire motor carriers and for-hire carriers with their own operating authority leasing to another such carrier are subject to lesser requirements. For-hire carriers in interstate commerce are exempt from the rules if they operate exclusively in commercial zones. Commercial zones, last set by the ICC in 1975, are generally defined as a municipality and a distance from the limits of the municipality that ranges from 3 miles for cities with populations less than 2,500 to 20 miles for cities of a million or more people. Some municipalities have additional areas defined for them.

Section 376.11 requires the following when the carrier leases equipment (Lessee) from a party supplying the equipment (Lessor), but does not hold

its own operating authority: (1) The lessor and lessee enter into a formal agreement that includes certain provisions (49 CFR 376.12); and (2) the lessee provides the lessor receipts specifying the equipment being leased at the beginning and end of the lease. These two provisions account for the burden in this information collection.

Comments From the Public

General Summary

FMCSA received three comments to the 60-day **Federal Register** notice published on March 27, 2013 (78 FR 18666), regarding the Agency's Information Collection Activities; New Information Collection: Lease and Interchange of Vehicles. Comments were received from the Owner Operator Independent Drivers Association, Inc. (OOIDA), Transportation Intermediaries Association (TIA), and Sharp Auto Transport. Comments and responsive considerations are as follows:

OOIDA provided detailed comments, though they concluded that the burden estimates are justified and the burden of compliance with truck rules are ''minimal.'' OOIDA asked several questions. First, OOIDA asked why FMCSA initiated a request for comments on this ICR, as well as who, or what prompted the ICR, and what is the ICR's purpose.

FMCSA Response

In 2009, the National Transportation Safety Board (NTSB) recommended to FMCSA that the Agency require passenger motor carriers be subject to the same limitations on the leasing of equipment as interstate for-hire motor carriers of cargo (*NTSB Recommendation H–09–33*).[1] Since 2012, the OMB has published an FMCSA Unified Agenda entry entitled ''Lease and Interchange of Vehicles; Motor Carriers of Passengers,'' RIN 2126–AB44, addressing regulations governing the lease and interchange of passenger-carrying commercial motor vehicles similar to the leasing of equipment by interstate for-hire motor carriers of cargo.[2] FMCSA published a notice of public rulemaking (NPRM) entitled, ''Lease and Interchange of Vehicles: Motor Carriers of Passengers,'' (bus carrier NPRM) under RIN 2126–AB44 on September 20, 2013 (78 FR 57822). The proposal for bus carriers to address the NTSB recommendation has similar information collection requirements as the truck leasing rules. Therefore, FMCSA will coordinate the bus and truck ICRs accordingly.

In addition, the bus carrier NPRM is necessary to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement by operating under the authority of another carrier that exercises no actual control over those operations. This action will enable the FMCSA, the NTSB and our Federal and State partners to identify motor carriers transporting passengers in interstate commerce and correctly assign responsibility to these entities for regulatory violations during inspections, compliance investigations, and crash studies. It also provides the general public with the means to identify the responsible motor carrier at the time of motorcoach transportation. ''Why is FMCSA attempting to study an area of regulation that Congress largely left in the hands of private parties and that FMCSA has steadfastly refused to become involved in despite several entreaties by OOIDA in the past?''

FMCSA Response

The detailed lease and interchange regulations for cargo-carrying vehicles have been in effect since 1950 and are not within the scope of the bus carrier NPRM. The ICR in this *truck leasing* ICR action will be coordinated with that of the bus leasing NPRM to eventually calculate a total burden for all regulations covering *all leases and interchanges of CMVs* regulated by FMCSA.

OOIDA correctly pointed out a mistake in the 60-day notice. ''This ICR will enable FMCSA to document the burden associated with the *marking regulations* codified in 49 CFR part 376. FMCSA incorrectly identified a CMV marking notice instead of the lease and interchange regulations that are codified in 49 CFR part 376. This error has been corrected in this notice and the associated Supporting Statement for this ICR.

Sharp Transport and TIA both believe the elimination of written lease and interchange requirements would be a mistake. TIA believes that leasing requirements alleviate concerns within the transportation industry of fraudulent entities in the supply chain, by placing safeguards in the industry. TIA believes if this requirement is eliminated it will make it easier for carriers who are illegally brokering to continue the detrimental practice. Sharp Transport believes removal of the provisions will make enforcement impossible.

FMCSA Response

FMCSA has not proposed elimination of written leasing agreements. FMCSA is merely attempting to comply with the Paperwork Reduction Act of 1995 requirements and Office of Management and Budget (OMB) regulations at 5 CFR 1320 to calculate an accurate estimate of the time and cost burdens to for-hire freight motor carriers to collect information during lease negotiations and document the lease, receipts, and other paperwork required by 49 CFR part 376. The 60-day notice published on March 27, 2013 was FMCSA's first required step in getting OMB to approve the part 376 estimates of time and cost burdens. This 30-day notice is the second required step in the OMB approval process for the part 376 estimates.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87 on: March 12, 2014.

G. Kelly Leone,

Associate Administrator, Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2014–06839 Filed 3–26–14; 8:45 am]

BILLING CODE 4910–EX–P

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

[2] *http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201210&RIN=2126-AB44.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America (Daimler)

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Daimler Trucks North America (Daimler) has requested an exemption for one commercial motor vehicle (CMV) driver from the Federal requirement to hold a commercial driver's license (CDL) issued by one of the States. Daimler requests that the

exemption cover a project engineer who will test drive CMVs for Daimler within the United States. This driver holds a valid German CDL and wants to test-drive Daimler vehicles on U.S. roads to better understand product requirements for these systems in ''real world'' environments, and verify results. Daimler believes the requirements for a German CDL ensure that the same level of safety is met or exceeded as if this driver had a U.S. State-issued CDL.

DATES: Comments must be received on or before April 28, 2014.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2012–0032 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov* at any time and in the box labeled ''SEARCH for'' enter FMCSA–2012–0032 and click on the tab labeled ''SEARCH.''

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

In the May 12, 2012, **Federal Register** (77 FR 31422) FMCSA granted Daimler a similar exemption for two of its test drivers. Each held a valid German CDL but lacked the U.S. residency necessary to obtain a CDL. FMCSA concluded that the process for obtaining a German CDL is comparable to or as effective as the U.S. CDL requirements and ensures that these drivers will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

Request for Exemption

Daimler has applied for an exemption for one of its engineers from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. This driver, Sven Ennerst, is unable to obtain a CDL in any of the U.S. States. A copy of the application is in Docket No. FMCSA–2012–0032.

The exemption would allow Mr. Ennerst to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and environmental regulatory requirements and to promote the development of technology advancements in vehicle safety systems and emissions reductions. According to Daimler, Mr. Ennerst will typically drive for no more than 6 hours per day for 2 consecutive days, and that 10 percent of the test driving will be on two-lane state highways, while 90 percent will be on interstate highways. The driving will consist of no more than 200 miles per day, for a total of 400 miles during a two-day period on a quarterly basis. He will in all cases be accompanied by a holder of a U.S. CDL who is familiar with the routes to be traveled.

Daimler requests that the exemption cover a two-year period. Mr. Ennerst holds a valid German CDL, and as explained by Daimler in its exemption request, the requirements for that license ensure that the same level of safety is met or exceeded as if this driver had a U.S. CDL.

FMCSA has determined that the process for obtaining a German-issued CDL is comparable to, or as effective as the Federal requirements of 49 CFR Part 383, and adequately assesses a driver's ability to operate CMVs in the United States.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Daimler's application for an exemption from the CDL requirements of 49 CFR 383.23. The Agency will consider all comments received by close of business on April 28, 2014. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: March 14, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–06842 Filed 3–26–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0149]

Notice of Reinstatement of Informal Hearing Procedure

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

ACTION: Notice.

SUMMARY: FMCSA announces that it is reinstating the informal hearing procedure authorized under the Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings (Rules of Practice), codified at 49 CFR part 386. On June 7, 2010, the Agency stated that it would not entertain new requests for informal hearings pending a reevaluation of the procedure, based on concerns about the neutrality of Agency Hearing Officers. After conducting numerous informal hearings (involving cases that were pending at the time the 2010 notice was published) with an attorney in the Office of Chief Counsel's Section of Adjudications serving as Hearing Officer, the Agency believes informal hearings should remain an option for administrative adjudication of contested civil penalty claims and will again permit respondents in enforcement cases to request this option. Prior to June 7, 2010, FMCSA had made informal hearings available only to respondents located within its Eastern and Midwestern Service Centers. The Agency removes this geographical limitation and will make informal hearings available to all respondents, regardless of where they are domiciled.

DATES: Effective March 27, 2014.

ADDRESSES: For access to the docket to read background documents, including those referenced in this document, or to read comments received, go to *http://www.regulations.gov* at any time and insert ''FMCSA–2010–0149'' in the ''Keyword'' box, and then click ''Search.'' The docket is also available by going to the ground floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sue Lawless, Office of Chief Counsel, Adjudications Counsel (MC–CCA), FMCSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 113(f), Congress directed FMCSA to carry out the duties and powers related to motor carriers or motor carrier safety vested in the Secretary of Transportation by chapters 5, 51, 55, 57, 59, 133 through 149, 311, 313, 315 and 317 of title 49 of the U.S. Code, except as otherwise delegated by the Secretary. Regulations implementing this statutory authority include the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 380–399), the Federal Motor Carrier Commercial Regulations (FMCCRs) (49 CFR parts 360–379), and the Federal Hazardous Materials Regulations (HMRs) (49 CFR parts 171–180).

FMCSA's enforcement powers include the general authority to conduct administrative enforcement proceedings for violations of the FMCCRs (49 U.S.C. 14701) as well as to assess civil penalties for violations related to commercial motor vehicle safety (49 U.S.C. chapter 5) and hazardous materials (49 U.S.C. chapter 51).

In accordance with this authority, the Agency promulgated regulations governing civil penalty and driver disqualification proceedings before the Agency. These regulations are known as the Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings (Rules of Practice) and are codified at 49 CFR part 386.

In May 2005, the Agency amended the Rules of Practice to establish, among other things, an informal hearing process as an option for adjudicating administrative enforcement proceedings (see 70 FR 28467, May 18, 2005). Civil penalty proceedings are initiated by issuance of a Notice of Claim by a representative of the Agency (Claimant) pursuant to 49 CFR 386.11(c). Under 49 CFR 386.14(b)(2), the party against whom a claim is made (Respondent) must reply to the Notice of Claim by electing one of three options: (1) paying the full amount of the claim; (2) contesting the claim by requesting administrative adjudication pursuant to section 386.14(d); or (3) seeking binding arbitration in accordance with the Agency's arbitration program. Under 49 CFR 386.14(d)(1)(iii), a respondent electing administrative adjudication may request that the matter be adjudicated either through: (A) Submission of written evidence without hearing; or (B) an informal hearing; or (C) a formal hearing.

The informal hearing process was intended to provide expedited consideration of a civil penalty case by a neutral third party without the formalities attendant to a hearing before an Administrative Law Judge (see 69 FR 61620, Oct. 20, 2004). Section 386.2 defines an informal hearing as ''a hearing in which the parties have the opportunity to present relevant evidence to a neutral Hearing Officer, who will prepare findings of fact and recommendations for the Agency decisionmaker. The informal hearing will not be on the transcribed record, and discovery will not be allowed. Parties will have the opportunity to discuss their case and present testimony and evidence before the Hearing Officer without the formality of a formal hearing.'' After receiving the Hearing Officer's report and recommendations, the Assistant Administrator (AA), who, pursuant to section 386.2, is the Agency's ''decisionmaker,'' has the discretion to either adopt the report or issue other orders as he or she deems appropriate. [See sections 386.16(b)(4)(i)(A) and 386.61(b).]

FMCSA implemented informal hearings on a graduated basis in order to evaluate the efficacy of this new process. In the first phase of implementation, FMCSA considered requests for informal hearings only from respondents in the Midwestern Service Center's geographical area (see 71 FR 13894, Mar. 17, 2006). In the second phase, FMCSA expanded eligibility to respondents in the Eastern Service Center's geographical area (see 72 FR 6806, Feb. 13, 2007). FMCSA was concerned about the appropriateness of the personnel the Agency assigned to serve as Hearing Officers. Section 386.2 defines ''Hearing officer'' as ''a neutral Agency employee designated by the Assistant Administrator to preside over an informal hearing.'' The Agency selected two FMCSA employees—one located in the Southern Service Center and one located in the Western Service Center—to serve as Hearing Officers. However, the Agency did not receive enough informal hearing requests to dedicate these employees as full-time Hearing Officers. As a result, these employees also continued to carry out their existing responsibilities related to the implementation of the enforcement programs in their respective Service Center areas. FMCSA was concerned that FMCSA personnel involved in the Agency's enforcement program may not be considered neutral.

Suspension of Informal Hearing Procedure

On June 7, 2010, FMCSA published a **Federal Register** notice stating that it was suspending the use of informal hearings for enforcement actions

initiated after publication of the notice pending reevaluation of the informal hearing procedure (see 75 FR 32242). At that time, there were 20 pending cases awaiting informal hearings and an additional 13 cases in which respondents had requested informal hearings subject to objections by the Eastern and Midwestern Service Centers. In order to avoid further delaying the resolution of these cases, the Agency assigned them to a Hearing Officer located within the Office of Chief Counsel's Section of Adjudications. This section is not connected with the Agency's enforcement program and the attorneys assigned to this section currently draft decisions and orders in civil penalty cases, safety rating appeals, and Hazardous Materials Permit appeals for the review and signature of FMCSA's Assistant Administrator. See 49 CFR 386.3. In its June 7, 2010 notice, FMCSA sought public comment on options for implementing an effective informal hearing process.

Comments on the Notice

Only the American Trucking Associations (ATA) submitted a comment in response to the Notice. The ATA made three suggestions that it believed would either enhance the neutrality of the process or speed its resolution: (1) Allow service of claims and responses to claims via electronic means; (2) utilize hearing officers who are not employed by FMCSA to conduct informal hearings; and (3) permit carriers who opt for an informal hearing to preserve their right to a formal hearing.

Response to Comments

The ATA's first suggestion could potentially speed the adjudicatory process, not only for informal hearings, but for other matters coming before the Assistant Administrator under 49 CFR part 386. Implementation of this proposal, however, would require the Agency to revise its rules regarding service of documents to permit electronic service, and the Agency will consider doing so at the appropriate time.

ATA's second suggestion is based on the misconception that any FMCSA employee, regardless of his or her position in the agency, is necessarily biased and cannot act as a neutral arbiter. Under the Agency's Rules of Practice, the Chief Counsel, the Special Assistant to the Chief Counsel, and attorneys in the Chief Counsel's Section of Adjudications are separated from enforcement functions and enforcement counsel, and advise the Assistant Administrator in contested cases. (See 49 CFR 386.3.) These attorneys have advised the Assistant Administrator, and prepared numerous orders and decisions in matters coming before the Assistant Administrator during the past several years, many of which have been favorable to respondents in contested enforcement cases.

After suspending the informal hearing process for enforcement actions initiated on or after June 7, 2010, the Agency held informal hearings in more than 30 cases pending before that date, with an Adjudications attorney serving as Hearing Officer. The informal hearings, which were held via teleconference, proved to be an efficient, less expensive means of adjudication than a formal hearing before an administrative law judge. They were less resource intensive for both parties, provided a timely means of resolution, and were an effective means to resolve enforcement cases. The Agency intends to continue to use personnel identified in section 386.3, including Adjudications counsel, as hearing officers, but reserves the right to use other neutral arbiters.

The ATA's third suggestion is essentially a request to amend 49 CFR 386.16(b)(4)(A) by eliminating the final sentence of that paragraph, which states: ''By participating in an informal hearing, respondent waives its right to a formal hearing.'' Implementation of this recommendation would require notice and comment rulemaking and, as such, is beyond the scope of this notice. Moreover, it appears to be based on the erroneous assumption that a respondent waives its right to appeal the decision of the Hearing Officer by requesting an informal hearing. This is not the case.

The Hearing Officer issues a report to the Assistant Administrator that includes findings of fact and a recommended disposition of the case. The Assistant Administrator then issues either a Final Order adopting the report or other orders he or she may deem appropriate. If a respondent disagrees with the Final Order, it may submit a petition for reconsideration under 49 CFR 386.64. Final Orders in informal hearing cases are also subject to the appeal provisions of section 386.67. There is a right, therefore, to appeal the Hearing Officer's recommendation.

Furthermore, if a respondent is concerned about the fairness of the informal hearing process, it has the option of requesting a formal hearing in its reply to the Notice of Claim. A respondent requesting a formal hearing simply because it is dissatisfied with the results of the informal hearing process would essentially be engaging in forum shopping. Permitting such a practice would be an inefficient use of Agency resources and delay resolution of the matter.

Reinstatement of Informal Hearings

Accordingly, FMCSA rescinds its June 7, 2010 notice suspending the availability of informal hearings for enforcement actions initiated on or after the date of that Notice. In addition, the Agency removes the geographical limitations on eligibility for informal hearings imposed on March 17, 2006 and February 13, 2007. The informal hearing option will be available to all respondents subject to civil penalty enforcement actions initiated by Notices of Claim issued on or after the date of this notice.

Issued on: March 14, 2014.

Anne S. Ferro,

Administrator.

[FR Doc. 2014–06838 Filed 3–26–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2014–0008]

State of Good Repair Grants Program: Proposed Circular; Correction

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of proposed circular and request for comments; correction.

SUMMARY: On March 3, 2014, the Federal Transit Administration (FTA) published a notice of available guidance regarding the State of Good Repair Grants program. In the March 3, 2014, notice, the **DATES** section was incorrect and this notice corrects it.

DATES: Comments must be received by May 2, 2014. Late filed comments may be considered so far as practicable.

ADDRESSES: You may submit comments, identified by docket number FTA–2014–0008, by any of the methods described in the March 3, 2014, notice.

FOR FURTHER INFORMATION CONTACT: Eric Hu, FTA Office of Program Management, (202) 366–0870, *Eric.Hu@dot.gov*.

SUPPLEMENTARY INFORMATION: On March 3, 2014, the FTA published a notice in the **Federal Register** (79 FR 11865) stating that the FTA had placed in the docket and on its Web site proposed guidance in the form of a circular, FTA Circular 5300.1, to assist recipients of financial aid under the 49 U.S.C. 5337 State of Good Repair (SGR) Grants

program. The March 3, 2014, notice also provided a summary of and sought public comment on the proposed FTA Circular 5300.1.

The March 3, 2014, notice incorrectly stated that the deadline for the submission of comments on the proposed FTA Circular 5300.1 was April 2, 2014. The correct deadline for the submission of comments is May 2, 2014.

Therese W. McMillan,

Deputy Administrator.

[FR Doc. 2014–06823 Filed 3–26–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0032]

Aston Martin Lagonda Limited; Receipt of Petition for Temporary Exemption From New Requirements of Standard No. 214

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

ACTION: Notice of receipt of a petition for a temporary exemption from new requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 214, *Side impact protection;* request for comment.

SUMMARY: In accordance with the procedures in 49 CFR part 555, Aston Martin Lagonda Limited (Aston Martin) has petitioned the agency for a temporary exemption from new pole and moving deformable barrier test requirements of FMVSS No. 214. The petitioner states that compliance would cause Aston Martin substantial economic hardship and that it has tried in good faith to comply with the standard. NHTSA is publishing this document in accordance with statutory and administrative provisions, and requests comments on the petition. NHTSA has made no judgment on the merits of the petition.

DATES: If you would like to comment on the petition, you should submit your comment not later than April 28, 2014.

FOR FURTHER INFORMATION CONTACT: Deirdre Fujita, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

ADDRESSES: You may submit your comment, identified by the docket number in the heading of this document, by any of the following methods:

- Web site: *http://www.regulations.gov*. Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- Fax: 1–202–493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html*.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

SUPPLEMENTARY INFORMATION:

I. Background

a. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

In recognition of the more limited resources and capabilities of small manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts is provided in the Safety Act to enable the agency to give those manufacturers additional time to comply with the Federal safety standards. The Safety Act authorizes the Secretary to grant a temporary exemption to a manufacturer whose total motor vehicle production in the most recent year of production is not more than 10,000 motor vehicles, on such terms as the Secretary deems appropriate, if the exemption would be consistent with the public interest and the Safety Act and ''compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.'' (49 U.S.C. 30113(b)(3)(B)(i).)

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of the Safety Act (49

U.S.C. Chapter 301).[1] A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

b. FMVSS No. 214

In 2007, NHTSA published a final rule upgrading FMVSS No. 214.[2] The rule incorporated a dynamic pole test into the standard, requiring vehicle manufacturers to assure head and improved chest protection in side crashes by way of technologies such as side curtain air bags and torso side air bags. Among other things, the technologies improve head and thorax protection to occupants of vehicles that crash into poles and trees and vehicles that are laterally struck by a higher-riding vehicle. The final rule adopted use of two advanced test dummies in the new pole test, representing occupants ranging from mid-size males to small females.[3] The final rule also enhanced the standard's moving deformable barrier (MDB) test by replacing the then-existing 50th percentile adult male dummy used in the front seat of tested vehicles with the more biofidelic ES–2re mid-size male dummy, and by using the SID–IIs 5th percentile adult female dummy in the rear seat.

The pole test requirements are being phased in, starting from 2010 for most vehicles (see S9, FMVSS No. 214) and ending with most vehicles manufactured on or after September 1, 2014 required to meet the requirements. Excluded from the phase-in are vehicles that are manufactured by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States (''small volume manufacturers'') (S9.1.3(a)(1)). Under FMVSS No. 214, small volume manufacturers are not subject to the phase-in, but must certify the compliance of their vehicles manufactured on or after September 1, 2014, to the pole test.

In addition, FMVSS No. 214 provides that the pole test does not apply to convertibles manufactured before September 1, 2015 (S9.1.3(d)(1)).

The enhanced MDB test is also being phased in (see S7.2.1, FMVSS No. 214) based on the same phase-in schedule as the pole test. Excluded from the phase-in are small volume manufacturers (see S7.2.4(a)(1)). Under FMVSS No. 214, small volume manufacturers are not subject to the phase-in, but must certify the compliance of their vehicles manufactured on or after September 1, 2014 to the enhanced MDB requirements.

FMVSS No. 214 also provides that the enhanced MDB requirements do not apply to convertibles manufactured before September 1, 2015 (S7.2.4(a)(3)).

According to Aston Martin's petition, the manufacturer currently manufactures approximately 4,000 Aston Martin brand vehicles per year worldwide. Thus, the requirements that are the subject of the petition are FMVSS No. 214's pole and enhanced MDB requirements, which apply to petitioner's sedans (coupes) manufactured on or after September 1, 2014, and to the convertibles manufactured on or after September 1, 2015.

c. Summary of Petition[4]

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Aston Martin has submitted a petition asking the agency for a temporary exemption from the new pole and MDB requirements of FMVSS No. 214[5] for the petitioner's DB9 and Vantage models. (Aston Martin states that the two other models it produces—the Vanquish and the Rapide S—will be compliant with the pole and enhanced MDB tests on September 1, 2014 (regarding the coupes) and September 1, 2015 (regarding the convertibles).) The basis for the application is that compliance would cause Aston Martin substantial economic hardship and that the petitioner has tried in good faith to comply with the standard.

Aston Martin describes itself as a corporation organized under the laws of England. Petitioner states that it ''has never manufactured in any year (calendar or model) more than 7,500 Aston Martin brand vehicles.''[6] It sells its cars through a network of 150 dealerships worldwide. Petitioner states that since the sale by Ford in 2007, Aston Martin ''has been an independent manufacturer not connected to any large OEM.''

The petition requests an exemption for the following periods:

- DB9 coupe model production from September 1, 2014 until August 31, 2016;
- DB9 convertible model production from September 1, 2015 until August 31, 2016;
- Vantage coupe model production from September 1, 2014 until August 31, 2017; and,
- Vantage convertible model production from September 1, 2015 until August 31, 2017.

The petitioner believes that 670 vehicles would be covered by the requested exemption. This would be the total number of exempted vehicles imported into the United States over the entire exemption period.

According to the petition, Aston Martin originally planned for the ''roll out of the *next generation''* DB9 and Vantage models to meet the new pole and MDB requirements of FMVSS No. 214. [Emphasis in text.] The petitioner states that Aston Martin started development work on its two models (the Vanquish and the Rapide) that would not be moving into a new generation by the compliance dates of the new pole and MBD requirements. Petitioner states that these two models are on track for meeting the new FMVSS No. 214 requirements by the date specified by the standard. Petitioner states that Aston Martin ''did not foresee the need to reengineer the current DB9 and Vantage for new MDB and pole test compliance because these models were scheduled to be replaced by the next generation vehicles.''

However, Aston Martin explains, the arrival of the next generation of the DB9 and Vantage models has been delayed. Petitioner states:

> Because of little market recovery since 2009, Aston Martin sales volumes have not been sufficient to fund the investment required to deliver the original 2011 plan. Due to these funding constraints, spending on the next generation of vehicles was

[1] While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a ''temporary basis,'' (49 U.S.C. 30113(b)(1)), the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

[2] 72 FR 51908 (September 11, 2007); response to petitions for reconsideration 73 FR 32473 (June 9, 2008), 75 FR 12123 (March 15, 2010).

[3] A test dummy known as the ES–2re represents mid-size adult male occupants. A test dummy known as the SID–IIs represents smaller stature occupants. The SID–IIs is the size of a 5th percentile adult female.

[4] To view the petition, go to *http://www.regulations.gov* and enter the docket number set forth in the heading of this document.

[5] NHTSA understands the petitioner as referring to the ''vehicle-to-pole requirements'' in S9 of FMVSS No. 214 and to the ''moving deformable barrier (MDB) requirements'' in S7, specifically the requirements in S7.2, ''MDB test with advanced test dummies.''

[6] The petitioner provided confidential production figures to support its claim.

minimal, and Aston Martin could not initiate the start of FMVSS 214 compliance programs on DB9 or Vantage. Therefore, the company investigated options to deliver more cash into the business. It was not until 30 April 2013 that Aston Martin received a capital increase of £150m into the business from Investindustrial in return for a 37.5% interest in the company. This capital injection provided the funds needed to deliver the next generation of vehicles. In short, Aston Martin needs the exemption to continue the DB9 and Vantage USA production until the replacement vehicles are ready.

The petition provides information on the effect that compliance—or a failure to obtain an exemption—would have on the manufacturer. Petitioner states that the DB9 and Vantage models will not comply with the pole and enhanced MDB test requirements ''without complete revision of the side air bag systems and complete validation of crash testing.'' Aston Martin states that developing completely new pole and MDB test compliance systems for the vehicles ''would be cost prohibitive given that these models will cease USA production in the near term and the cost of amortization over the approximately 670 cars at issue would be economically infeasible.''

Aston Martin indicates that its past three year financial statements show a cumulative loss of approximately £39 Million. Petitioner believes that the effect amounts to substantial economic hardship ''above and beyond the substantial economic hardship that Aston Martin is presently experiencing.'' Among other matters, petitioner states that approximately $30 million expenditure would be required to achieve compliance, and the finances needed to meet the new pole and MDB requirements are ''just not available.''

In addition, petitioner states, ''The new investor in Aston Martin has committed its investment money for the next generation vehicle—as obviously the longer term hopes for the company depend on the future models. Aston Martin funding needs to be focused on the next generation of vehicles to ensure the recovery of the company and protect its dealer network.''

Aston Martin provides information related to its efforts to comply with the standard. Petitioner states that its challenges to reengineer the DB9 and Vantage relate to: its being a small organization with limited skilled internal resources; at least two global restraint system suppliers have indicated that Aston Martin's volumes are too low for the suppliers to be interested in its projects; ''few external CAE/Structural suppliers have experience in Aston Martin's unique bonded aluminum structural concept; and the need to also engineer compliance with FMVSS No. 226, ''Ejection mitigation.'' Petitioner states that ''for Aston Martin to find an *interim* MDB/Pole solution for only 670 cars and then to be compelled to *reengineer* FMVSS 208, 214 and 226 compliance for 2017 would be a huge investment which Aston Martin neither has nor can justify.'' [Emphases in text.]

Aston Martin believes that the number of vehicles to be sold in the U.S. during the exemption would be ''very low and the number of annual miles driven in Aston Martin vehicles is very low (on average 2617 miles).'' Further, Aston Martin contends that ''denial of the exemption request here will have a negative effect on U.S. employment.'' Petitioner believes that if the petition were denied, ''for a 2–3 year period U.S. dealers would be restricted in their product range and would only be able to sell Vanquish and Rapide S, which would impact their ability to maintain a financial viable operation.'' Aston Martin notes that the DB9 was tested to the pole test with the ES–2re adult male dummy and passed the injury criteria, but did not do so with a compliance margin sufficient for the manufacturer to certify compliance based on a single test.

d. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested exemption. The agency has tentatively concluded that Aston Martin's petition is complete and that the petitioner is eligible to apply for a temporary exemption. The agency has not made any judgment on the merits of the application, and is placing a non-confidential copy of the petition in the docket.

The agency seeks comment from the public on the merits of Aston Martin's petition for a temporary exemption from the pole and enhanced MDB requirements of FMVSS No. 214. After considering public comments and other available information, we will publish a notice of final action on the petition in the **Federal Register**.

Issued on: March 20, 2014.

Claude H. Harris,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2014–06834 Filed 3–26–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 414 (Sub-No. 7X)]

Iowa Interstate Railroad, Ltd.—Abandonment Exemption—in Pottawattamie County, Iowa

Iowa Interstate Railroad, Ltd. (IAIS) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a line of railroad extending from milepost 467.77 near Hancock Junction, Iowa, to the end of the track at milepost 469.59 near Oakland, Iowa, a distance of approximately 1.82 miles in Pottawattamie County, Iowa. The line traverses United States Postal Service Zip Code 51560.

IAIS has certified that: (1) No local traffic has moved over the line for at least two years; (2) no overhead traffic could be or was previously handled on the stub-ended line; (3) no formal complaint by a user of rail service on the line (or 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 during the last two years; 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 April 26, 2014, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1]

[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

Continued

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 April 7, 2014. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 16, 2014, 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 IAIS's representative: Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

IAIS 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 April 1, 2014. 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), IAIS 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 IAIS's filing of a notice of consummation by March 27, 2015, 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: March 24, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2014–06774 Filed 3–26–14; 8:45 am]

BILLING CODE 4915–01–P

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 TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35799]

Rapid City, Pierre & Eastern Railroad, Inc.—Acquisition and Operation Exemption Including Interchange Commitment—Dakota, Minnesota & Eastern Railroad Corporation

Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.35 to acquire from Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific (DM&E)[2] and to operate approximately 670 miles of rail lines known as the DM&E West Lines in Minnesota, South Dakota, Nebraska, and Wyoming. RCP&E would also acquire approximately 219 miles of incidental trackage rights over connecting lines of DM&E and other carriers. RCP&E and DM&E entered into an agreement regarding this transaction on January 2, 2014.[3] This transaction would result in RCP&E's becoming a Class II rail carrier.

Acquired Lines.[4] The specific lines to be acquired by RCP&E include: (1) Huron Subdivision between Tracy, Minn., at milepost 231.5 and Huron, S.D., at milepost 362.7, a distance of 131.2 miles; (2) Pierre Subdivision between Huron at milepost 362.7 and Ft. Pierre, S.D., at milepost 484.4, a distance of 121.7 miles; (3) PRC Subdivision between Ft. Pierre at milepost 484.4 and Pressler Jct., S.D., at milepost 649.2, a distance of 164.8 miles; (4) Black Hills Subdivision between Dakota Jct., Neb., at milepost 0.4 and Bentonite/Colony, Wyo., at milepost 174.7, a distance of 174.3 miles; (5) Crawford Subdivision between Dakota Jct. at milepost 411.72± and Crawford, Neb., at milepost 432.5±, a distance of 20.78 miles; (6) Onida Subdivision between Onida, S.D., at milepost 97.5 and Blunt, S.D., at milepost 115.1, a distance of 17.6 miles; (7) Mansfield Subdivision between Redfield, S.D., at milepost 39.7 and Mansfield, S.D., at milepost 66.9, a distance of 27.2 miles; and (8) Yale Spur[5] between Yale, S.D., at milepost 145.0 and Huron, S.D., at milepost 160.3±, a distance of 15.3 miles.

Notwithstanding the sale of the lines described above, DM&E would retain the common carrier obligation with respect to the handling of coal to, from, and over the DM&E West Lines until December 31, 2030, and RCP&E would not assume the common carrier obligation to handle coal shipments during that period.[6]

Incidental Trackage Rights. The specific incidental trackage rights that RCP&E will acquire are over lines: (1) owned and operated by DM&E between Tracy at milepost 231.5 and Mankato, Minn., at milepost 142.4, a distance of 89.1 miles; (2) operated by BNSF Railway Company (BNSF), being assigned to RCP&E by DM&E, as successor to Chicago and Northwestern Transportation Company between Wolsey, S.D., at milepost 70.50 and Aberdeen, S.D., at milepost 777.04, a distance of 72.04 miles; and (3) owned and operated by BNSF, being assigned to RCP&E by DM&E between Yale at milepost 148.5 and Watertown, S.D., at milepost 90.72, and yard trackage at Huron at milepost 160.33 to the end of track, a distance of 58.65 miles.[7]

RCP&E certifies that the proposed transaction involves an interchange commitment. As part of the transaction, RCP&E will be acquiring DM&E's ''Colony Line.'' RCP&E will be assuming certain interchange rights and obligations arising under the existing agreements that were executed when DM&E acquired the Colony Line from Union Pacific Railroad Company in 1996. Among those assumed obligations will be certain obligations under the existing Colony Line Car Supply, Services, and Divisions Agreement (CSSDA) for the remainder of the term

[1] RCP&E is a wholly owned subsidiary of Genesee & Wyoming Inc. (GWI).

[2] In *Canadian Pacific Railway—Control—Dakota, Minnesota & Eastern Railroad,* FD 35081 (STB served Sept. 30, 2008), the Board approved an application allowing Canadian Pacific Railway Company (CP) to acquire indirect control of DM&E and DM&E's wholly owned rail subsidiary, Iowa, Chicago & Eastern Railroad Corporation (IC&E).

[3] The Board is waiving the requirement that RCP&E submit an additional 10 copies of both the Public and Highly Confidential versions of the agreement. As noted by RCP&E, each document is hundreds of pages long, and it would be unduly burdensome and expensive to meet the requirement here. Moreover, RCP&E has submitted an electronic version of each document on a disk.

[4] DM&E is the current operator of the DM&E West Lines, with the exception of the Crawford Subdivision, which is operated by Nebraska Northwestern Railroad, Inc., pursuant to a lease agreement with DM&E.

[5] The Yale Spur is subleased from the East Central Railroad Authority, and the sublease is being assigned by DM&E.

[6] The acquisition by RCP&E also does not include any of the rights of DM&E or its affiliates to build into the Powder River Basin. *See Wyo. Dakota R.R. Prop.—Acquis. & Oper. Exemption—Dakota, Minn. & E. R.R.,* FD 34871 (STB served Aug. 14, 2006).

[7] Additionally, RCP&E would grant DM&E trackage rights between Tracy and Wolsey to allow DM&E to continue to handle overhead grain trains in conjunction with BNSF that are operating today between Florence, Minn., and points on DM&E beyond Tracy, and to handle non-revenue ballast trains, including the right to interchange such trains with BNSF at Wolsey. DM&E is expected to file a separate notice of exemption with the Board for trackage rights granted by RCP&E to DM&E.

of the CSSDA. As required under 49 CFR 1150.33(h)(1), RCP&E provided additional information concerning the interchange commitment.[8]

This transaction is related to a concurrently filed verified notice of exemption in *Genesee & Wyoming Inc.—Continuance in Control Exemption—Rapid City, Pierre & Eastern Railroad, Inc.,* Docket No. FD 35800, wherein GWI seeks Board approval under 49 CFR 1180.2(d)(2) to continue in control of RCP&E, upon RCP&E's becoming a Class II rail carrier.[9]

The earliest the transaction could be consummated is April 25, 2014, the effective date of the exemption (45 days after the exemption was filed).[10] The parties expect to consummate the transaction shortly after the exemption becomes effective, assuming all other conditions to closing have been satisfied by that time.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke would not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than April 11, 2014, which is 14 days before the exemption could become effective.[11]

An original and 10 copies of all pleadings, referring to Docket No. FD 35799 must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 24, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clerance Clerk.

[FR Doc. 2014–06820 Filed 3–26–14; 8:45 am]

BILLING CODE 4915–01–P

[8] *See* Verified Notice of Exemption 7–8.

[9] The DM&E West Lines also are the subject of an ongoing proceeding before the Board. In that proceeding, the State of South Dakota, by and through its Department of Transportation (State), filed a petition asking the Board to enforce three representations allegedly made by CP during the 2008 acquisition-of-control proceeding regarding investments that CP would make in DM&E and IC&E (collectively in that proceeding, DME). The Board issued decisions allowing the State to engage in discovery concerning those claims and setting a procedural schedule. *See Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R.,* FD 35081 (Sub-No. 2) (STB served Dec. 20, 2013, and Mar. 10, 2014). Discovery remains ongoing in that proceeding.

[10] *See* 49 CFR 1150.35(e).

[11] *See* 49 CFR 1150.35(f).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35800]

Genesee & Wyoming Inc.—Continuance in Control Exemption—Rapid City, Pierre & Eastern Railroad, Inc

Genesee & Wyoming Inc. (GWI), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2), to continue in control of Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E), a noncarrier, together with other railroads in GWI's corporate family, upon RCP&E's becoming a Class II railroad.

This transaction is related to a concurrently filed verified notice of exemption in *Rapid City, Pierre & Eastern Railroad, Inc.—Acquisition and Operation Exemption Including Interchange Commitment—Dakota, Minnesota & Eastern Railroad Corporation,* Docket No. FD 35799, wherein RCP&E seeks Board approval under 49 CFR 1150.35 to acquire from Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific (DM&E) [1] and to operate approximately 670 miles of rail lines known as the DM&E West Lines.[2] Upon consummation, RCP&E would own and operate rail lines in Nebraska, Minnesota, South Dakota, and Wyoming.[3] RCP&E would also acquire approximately 219 miles of incidental trackage rights over connecting lines of DM&E and other carriers.

The purpose of this verified notice of exemption is to enable GWI to continue in control of RCP&E, together with the other railroads in GWI's corporate family, upon RCP&E's becoming a Class II carrier. GWI points out that the transaction would allow RCP&E to take advantage of the administrative, marketing, and operational support that GWI can provide. In addition, according to GWI, as a long-term holder of short line railroads, GWI's ownership of RCP&E should provide shippers with the comfort of stable ongoing rail service.

Although this exemption could become effective on April 10, 2014 (30 days after the notice of exemption was filed), the parties do not intend to consummate this transaction until the concurrently filed notice of exemption in Docket No. FD 35799 becomes effective and all other closing conditions have been met. That exemption could become effective on April 25, 2014 (45 days after that exemption was filed).[4]

GWI notes that it currently controls, directly or indirectly, one Class II carrier and 100 Class III carriers operating in the United States.[5]

GWI represents that: (1) None of the railroads controlled by GWI would connect with the rail lines being acquired by RCP&E, or with the incidental trackage rights associated with RCP&E's acquisition; (2) the continuance in control is not part of a series of anticipated transactions that would connect RCP&E with the rail lines of any other carriers in GWI's corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. As a condition to the use of this exemption, any employees adversely affected by this transaction will be protected by the conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60 (1979).

[1] In *Canadian Pacific Railway—Control—Dakota, Minnesota & Eastern Railroad,* FD 35081 (STB served Sept. 30, 2008), the Board approved an application allowing Canadian Pacific Railway Company (CP) to acquire indirect control of DM&E and DM&E's wholly owned rail subsidiary, Iowa, Chicago & Eastern Railroad Corporation (IC&E).

[2] The DM&E West Lines also are the subject of an ongoing proceeding before the Board. In that proceeding, the State of South Dakota, by and through its Department of Transportation (State), filed a petition asking the Board to enforce three representations allegedly made by CP during the 2008 acquisition-of-control proceeding regarding investments that CP would make in DM&E and IC&E (collectively in that proceeding, DME). The Board issued decisions allowing the State to engage in discovery concerning those claims and setting a procedural schedule. *See Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R.,* FD 35081 (Sub-No. 2) (STB served Dec. 20, 2013, and Mar. 10, 2014). Discovery remains ongoing in that proceeding.

[3] RCP&E will also be acquiring a line in Nebraska that is currently leased to and operated by Nebraska Northwestern Railroad, Inc.

[4] *See* 49 CFR 1150.35(e).

[5] GWI was authorized, subject to conditions, to control RailAmerica, Inc., and its subsidiary railroads in *Genesee & Wyoming Inc.—Control—RailAmerica, Inc.,* FD 35654 (STB served December 20, 2012). GWI provides with its notice of exemption a map showing the locations of the GWI-controlled railroads.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke would not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than April 3, 2014 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35800 must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2014–06777 Filed 3–26–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request; Office of the Assistant Secretary for Financial Markets

AGENCY: Departmental Office, Treasury.

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 comment on a revision of an existing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of the Assistant Secretary for Financial Markets, within the Department of the Treasury, is soliciting comments concerning the New Issue Bond Program and Temporary Credit and Liquidity Program.

DATES: Written comments should be received on or before May 27, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Preston Atkins, Director of the HFA Initiative, Room 1136J, Main Treasury Building, Washington, DC 20220 or email at *HFAReporting@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Preston Atkins, Director of the HFA Initiative, Room 1136J, Main Treasury Building, Washington, DC 20220 or email at *HFAReporting@treasury.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1505–0224.

Title: New Issue Bond Program and Temporary Credit and Liquidity Program.

Abstract: Authorized under section 304(g) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(g)) and Section 306(l) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(l), as amended by the Housing and Economic Recovery Act (HERA) of 2008 (Pub. L. 110–289; approved July 30, 2008) the Department of the Treasury (Treasury) implemented two programs under the HFA (Housing Finance Agency) Initiative. The statute provides the Secretary authority to purchase securities and obligations of Fannie Mae and Freddie Mac (the GSEs) as he determines necessary to stabilize the financial markets, prevent disruptions in the availability of mortgage finance, and to protect the taxpayer. On December 4, 2009, the Secretary made the appropriate determination to authorize the two programs of the HFA Initiative: The New Issue Bond Program (NIBP) and the Temporary Credit and Liquidity Program (TCLP). Under the NIBP, Treasury purchased securities from the GSEs backed by mortgage revenue bonds issued by participating state and local HFAs. Under the TCLP, Treasury purchased a participation interest from the GSEs in temporary credit and liquidity facilities provided to participating HFAs as a liquidity backstop on their variable-rate debt. In order to properly manage the two programs of the initiative, continue to protect the taxpayer, and assure compliance with the Programs' provisions, Treasury instituted a series of data collection requirements to be completed by participating HFAs and furnished to Treasury through the GSEs.

Type of Review: Revision of a currently approved collection.

Affected Public: Private sector: Businesses or other for profit institutions; not-for-profit institutions.

Estimated Number of Respondents: 66.

Estimated Annual Response: 3,674.

Estimated Annual Burden Hours: 19,359.

Request For Comment: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (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 the burden of the collection 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 on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 24, 2014.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2014–06819 Filed 3–26–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0770]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Consideration will be given to all comments received by May 27, 2014.

ADDRESSES: Submit written comments on the collection of information to Crystal Rennie, (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0770'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie at (202) 632–7492.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 2900–0770.

Type of Review: Extension of a currently approved collection.

Abstract: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency 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 will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- 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.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Annual Burden: 100,000.

Customer Satisfaction Surveys: 17,500.

Focus Groups: 17,500.

Customer Comment Cards: 5,000.

Small Discussion Groups: 5,000.

Cognitive Laboratory Studies: 15,000.

Qualitative Customer Satisfaction Surveys: 17,500.

In-Person Observation Testing: 5,000.

Patient Surveys: 17,500.

Estimated Average Burden per Respondent

Customer Satisfaction Surveys: 30minutes.

Focus Groups: 30 minutes.

Customer Comment Cards: 30 minutes.

Small Discussion Groups: 30 minutes.

Cognitive Laboratory Studies: 30 minutes.

Qualitative Customer Satisfaction Surveys: 30 minutes.

In-Person Observation Testing: 30 minutes.

Patient Surveys: 30 minutes.

Frequency of Response: Once per request.

Estimated Number of Respondents: 200,000.

Customer Satisfaction Surveys: 35,000.

Focus Groups: 35,000.

Customer Comment Cards: 10,000.

Small Discussion Groups: 10,000.

Cognitive Laboratory Studies: 30,000.

Qualitative Customer Satisfaction Surveys: 35,000.

In-Person Observation Testing: 10,000.

Patient Surveys: 35,000.

Dated: March 24, 2014.

By direction of the Acting Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–06822 Filed 3–26–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Thursday,

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Part II

Federal Reserve System

12 CFR Part 252

Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 252

[Regulation YY; Docket No. 1438]

RIN 7100–AD–86

Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations

AGENCY: Board of Governors of the Federal Reserve System (Board), Federal Reserve System.

ACTION: Final rule; request for public comment on Paperwork Reduction Act burden estimates only.

SUMMARY: The Board is adopting amendments to Regulation YY to implement certain of the enhanced prudential standards required to be established under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more. The enhanced prudential standards include risk-based and leverage capital requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), stress-test requirements, and a 15-to-1 debt-to-equity limit for companies that the Financial Stability Oversight Council (Council) has determined pose a grave threat to financial stability. The amendments also establish risk-committee requirements and capital stress-testing requirements for certain bank holding companies and foreign banking organizations with total consolidated assets of $10 billion or more. The rule does not impose enhanced prudential standards on nonbank financial companies designated by the Council for supervision by the Board.

DATES: Effective date: June 1, 2014. Comments must be submitted on the Paperwork Reduction Act burden estimates only by May 27, 2014.

ADDRESSES: You may submit comments on the Paperwork Reduction Act burden estimates only, identified by Docket No. R–1438 and RIN 7100 AD 86, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW., Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Mark E. Van Der Weide, Senior Associate Director, (202) 452–2263, Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475–6316, Jordan Bleicher, Supervisory Financial Analyst, (202) 973–6123, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2277, or Christine E. Graham, Counsel, (202) 452–3005, Legal Division.

Risk-Based and Leverage Capital Requirements: Anna Lee Hewko, Deputy Associate Director, (202) 530–6260, or Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475–6316, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, or April C. Snyder, Senior Counsel, (202) 452–3099, Legal Division.

Liquidity Requirements: David Emmel, Manager, (202) 603–9017, Division of Banking Supervision and Regulation; or April C. Snyder, Senior Counsel, (202) 452–3099, or Dafina Stewart, Senior Attorney, (202) 452–3876, Legal Division.

Risk Management and Risk Committee Requirements: David E. Palmer, Senior Supervisory Financial Analyst, (202) 452–2904, Division of Banking Supervision and Regulation; or Jeremy C. Kress, Attorney, (202) 872–7589, Legal Division.

Stress-Test Requirements: Tim Clark, Senior Associate Director, (202) 452–5264, Lisa Ryu, Deputy Associate Director, (202) 263–4833, or Joseph Cox, Financial Analyst, (202) 452–3216, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, or Christine E. Graham, Counsel, (202) 452–3005, Legal Division.

Debt-to-Equity Limits: Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475–6316, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, or David W. Alexander, Senior Attorney, (202) 452–2877, Legal Division.

U.S. Intermediate Holding Company Requirement for Foreign Banking Organizations: Elizabeth MacDonald, Senior Supervisory Financial Analyst, (202) 475–6316, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, April C. Snyder, Senior Counsel, (202) 452–3099, Christine E. Graham, Counsel, (202) 452–3005, or David W. Alexander, Senior Attorney, (202) 452–2877, Legal Division.

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I. Introduction

A. The Dodd-Frank Act Mandate

Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or the Act) [1] directs the Board of Governors of the Federal Reserve System (Board) to establish prudential standards for bank holding companies with total consolidated assets of $50 billion or more and for nonbank financial companies that the Financial Stability Oversight Council (Council) has determined will be supervised by the Board (nonbank financial companies supervised by the Board) in order to prevent or mitigate risks to U.S. financial stability that could arise from the material financial distress or failure, or ongoing activities of, large, interconnected financial institutions. The Dodd-Frank Act requires the enhanced prudential standards established by the Board under section 165 of the Act to be more stringent than those standards applicable to other bank holding companies and to nonbank financial companies that do not present similar risks to U.S. financial stability.[2] The standards must also increase in stringency based on several factors, including the size and risk characteristics of a company subject to the rule, and the Board must take into account the difference among bank holding companies and nonbank financial companies based on the same factors.[3] Generally, the Board has authority under section 165 of the Act to tailor the application of the standards, including differentiating among companies subject to section 165 on an individual basis or by category. In applying section 165 to foreign banking organizations, the Dodd-Frank Act also directs the Board to give due regard to the principle of national treatment and equality of competitive opportunity, and to take into account the extent to which the foreign banking organization is subject, on a consolidated basis, to home country standards that are comparable to those applied to financial companies in the United States.[4]

The prudential standards must include enhanced risk-based and leverage capital requirements, liquidity requirements, risk-management and risk-committee requirements, resolution-planning requirements, single counterparty credit limits, stress-test requirements, and a debt-to-equity limit for companies that the Council has determined pose a grave threat to the financial stability of the United States. Section 165 also permits the Board to establish other prudential standards in addition to the mandatory standards, including three enumerated standards—a contingent capital requirement, enhanced public disclosures, and short-term debt limits—and any ''other prudential standards'' that the Board determines are ''appropriate.''

B. Background of the Proposals and Overview of the Final Rule

The Board invited comment on two separate proposals to implement the enhanced prudential standards included in this final rule. On January 5, 2012, the Board invited comment on proposed rules to implement the provisions of sections 165 and 166 of the Dodd-Frank Act for bank holding companies with total consolidated assets of $50 billion or more and for nonbank financial firms supervised by the Board (domestic proposal).[5] On December 28, 2012, the Board invited comment on proposed rules to implement the provisions of sections 165 and 166 of the Dodd-Frank Act for foreign banking organizations with total consolidated assets of $50 billion or more and foreign nonbank financial companies supervised by the Board (foreign proposal,[6] and, together

[1] Public Law 111–203, 124 Stat 1376 (2010).

[2] *See* 12 U.S.C. 5365(a)(1)(A).

[3] *See* 12 U.S.C. 5365(a)(1)(B). Under section 165(a)(1)(B) of the Dodd-Frank Act, the enhanced prudential standards must increase in stringency based on the considerations listed in section 165(b)(3).

[4] 12 U.S.C. 5365(a)(2).

[5] 77 FR 594 (January 5, 2012).

[6] 77 FR 76628 (December 28, 2012).

with the domestic proposal, the proposals). Consistent with the Dodd-Frank Act mandate, and in furtherance of financial stability, the proposals contained similar enhanced risk-based and leverage capital requirements, enhanced liquidity requirements, enhanced risk management and risk committee requirements, resolution planning requirements, single counterparty credit limits, stress-test requirements, and a debt-to-equity limit for companies that the Council has determined pose a grave threat to the financial stability of the United States. The foreign proposal also included a U.S. intermediate holding company requirement for a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets, other than those held by a U.S. branch or agency or U.S. subsidiary held under section 2(h)(2) of the Bank Holding Company Act [7] (U.S. non-branch assets), of $10 billion or more.

The Board received over 100 public comments on the domestic proposal, and over 60 public comments on the foreign proposal, from U.S. and foreign firms, public officials (including members of Congress), public interest groups, private individuals, and other interested parties. While many commenters expressed support for the broad goals of the proposed rules, some commenters criticized specific aspects of the proposals. As discussed in this preamble, the final rule makes adjustments to the proposed rules that respond to commenters' concerns. Major changes from the proposals are discussed below in section II.B of this preamble.

II. Final Rule and Major Changes From the Proposals

A. Description of the Final Rule

The final rule implements elements of both the domestic and foreign proposals. For a bank holding company with total consolidated assets of $50 billion or more, it incorporates as an enhanced prudential standard the previously-issued capital planning and stress testing requirements and imposes enhanced liquidity requirements, enhanced risk-management requirements, and the debt-to-equity limit for those companies that the Council has determined pose a grave threat to the financial stability of the United States. It also establishes risk-committee requirements for a publicly traded bank holding company with total consolidated assets of $10 billion or more. For a foreign banking organization with total consolidated assets of $50 billion or more, the final rule implements enhanced risk-based and leverage capital requirements, liquidity requirements, risk-management requirements, stress testing requirements, and the debt-to-equity limit for those companies that the Council has determined pose a grave threat to the financial stability of the United States. In addition, it requires foreign banking organizations with U.S. non-branch assets, as defined in the final rule, of $50 billion or more to form a U.S. intermediate holding company and imposes enhanced risk-based and leverage capital requirements, liquidity requirements, risk-management requirements, and stress-testing requirements on the U.S. intermediate holding company. The final rule also establishes a risk-committee requirement for publicly traded foreign banking organizations with total consolidated assets of $10 billion or more and implements stress-testing requirements for foreign banking organizations and foreign savings and loan holding companies with total consolidated assets of more than $10 billion.

The prudential standards established for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board (covered companies) must be more stringent than the standards and requirements applicable to bank holding companies and nonbank financial companies that do not present similar risks to the financial stability of the United States.[8]

The Board is developing an integrated set of prudential standards for covered companies through a series of rulemakings, including the resolution plan rule, the capital plan rule, the stress test rules, and this final rule. As discussed further in this preamble, the Board will continue to develop these standards through future rules and orders. The integrated set of standards will result in a more stringent regulatory regime to mitigate risks to U.S. financial stability, and include measures that increase the resiliency of covered companies and reduce the impact on U.S. financial stability were these firms to fail. These rules are applicable only to covered companies, and do not apply to smaller firms that present less risk to U.S. financial stability.

As explained more fully throughout the preamble, the final rules result in enhanced supervision and regulation of covered companies that is more stringent based on the systemic footprint and risk characteristics of the company than the provisions applicable to firms that are not covered companies and that take into account differences among covered companies based on these factors.[9]

For instance, bank holding companies and U.S. intermediate holding companies of foreign banking organizations are subject to the capital plan rule, which requires a company to project its regulatory capital ratios under stressed conditions and demonstrate the ability to meet the Board's minimum regulatory capital requirements. These minimum regulatory capital requirements include leverage and risk-based capital requirements. By requiring firms to demonstrate the ability to meet these capital requirements under stressed conditions, the capital plan rule subjects a company to more stringent standards as the leverage, off-balance sheet exposures, and interconnectedness of a covered company increase. For example, with respect to leverage, the Board's minimum leverage capital requirements require a U.S. company subject to the requirements to hold capital based on its total consolidated assets.[10] The more on-balance sheet assets that a company holds, the more capital the company must hold to comply with the minimum leverage capital requirement. Companies that have $250 billion or more in total consolidated assets or $10 billion or more in total foreign exposure based on year-end financial reports will become subject to a supplementary leverage ratio, which requires the companies to hold leverage capital for both their on- and off-balance sheet assets.[11] For a company subject to the supplementary leverage ratio, the more on- and off-balance sheet assets that the company holds, the more capital the company must hold to comply with the minimum leverage capital requirement.[12] The Board's risk-based capital rules require a company subject to the rules to deduct an investment in an unconsolidated financial institution above certain

[7] *See* 12 U.S.C. 1841(h)(2).

[8] *See* 12 U.S.C. 5365(a)(1)(A).

[9] *See* 12 U.S.C. 5365(b)(3).

[10] *See* 12 CFR 217.10(a)(4); 12 CFR part 208, Appendix B; 12 CFR part 225, Appendix D.

[11] 12 CFR 217.10(a)(5).

[12] More generally, the Board's capital rules require all companies subject to the rules to hold risk-based capital based on their off-balance sheet exposures. The more off-balance sheet exposures that a company holds, the more risk-based capital the company must hold. *See* 12 CFR 217.33; 12 CFR part 217, subpart E; 12 CFR part 208, Appendix A, section III.D.; 12 CFR part 225, Appendix A, section III.D.

thresholds.[13] The more investments in such unconsolidated financial institutions that a company has above these thresholds, the more deductions that a company must take from its regulatory capital.

Covered bank holding companies and foreign banking organizations are subject to the enhanced liquidity standards included in this final rule, which will result in a more stringent set of standards as the liquidity risk of a company's liabilities increases. For instance, the enhanced liquidity standards require covered bank holding companies and foreign banking organizations to maintain a liquidity buffer sufficient to cover net cash outflows based on a 30-day stress test. In general, the more a company relies on short-term funding, the larger the required buffer will be.

The set of enhanced prudential standards for bank holding companies and foreign banking organizations increases in stringency based on the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company. For example, the resolution plan rule applies a tailored resolution plan regime for smaller, less complex bank holding companies and foreign banking organizations that is materially less stringent than what is required of larger organizations. Similarly, the Board has tailored the application of and its supervisory expectations regarding stress testing and capital planning based on the size and complexity of covered companies. For instance, the Board applies the global market shock to the trading and private equity positions of the largest bank holding companies subject to the market risk requirements, and requires bank holding companies with substantial trading and custodial operations to include a counterparty default scenario component in their stress tests.[14] In addition, the capital, liquidity, risk-management, and stress testing requirements applicable to foreign banking organizations with combined U.S. assets of less than $50 billion are substantially reduced as compared to the requirements applicable to foreign banking organizations with a larger U.S. presence.

The Dodd-Frank Act requires the Board to consider the importance of the company as a source of credit for households, businesses, and state governments, source of liquidity for the U.S. financial system, and source of credit for low-income, minority, or underserved communities. As a whole, the standards increase the resiliency of bank holding companies and foreign banking organizations, which enables them to continue serving as financial intermediaries for the U.S. financial system and sources of credit to households, businesses, state governments, and low-income, minority, or underserved communities during times of stress.

The enhanced prudential standards for bank holding companies and foreign banking organizations take into account the extent to which the company is subject to existing regulatory scrutiny. As explained more below, for bank holding companies, the final rule applies enhanced prudential standards at the consolidated bank holding company, and does not directly apply any standards to functionally regulated subsidiaries. In recognition of the home-country supervisory regime applicable to foreign banking organizations, the final rule relies on the home country capital and stress testing regimes applicable to the foreign banking organization. However, to the extent that a foreign banking organization's home country capital or stress test standards do not meet the standards set forth in the final rule, the Board will impose requirements, conditions or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization.

The Board has designed the final rule to reduce the potential that small changes in the characteristics of the company would result in sharp, discontinuous changes in the standards. The enhanced prudential standards regime generally mitigates the potential for sharp, discontinuous changes by generally measuring the threshold for applicability of the enhanced prudential standards over a four-quarter period and providing for transition periods prior to application of the standards.

The final rule also takes account of differences among covered companies based on whether a company owns an insured depository institution and adapts the required standards as appropriate in light of any predominant line of business of such a company. Bank holding companies, by definition, control an insured depository institution, and engage in banking as a predominant line of business. Foreign banking organizations have a banking presence in the United States through either control of an insured depository institution or through U.S. branches or agencies. Foreign banking organizations that have branches and agencies are treated as if they were bank holding companies for purposes of the Bank Holding Company Act and the Dodd-Frank Act. By statute, both uninsured and insured U.S. branches and agencies of foreign banks may receive Federal Reserve advances on the same terms and conditions that apply to domestic insured state member banks. The risks to financial stability presented by foreign banking organizations with U.S. branches and agencies generally are not dependent on whether the foreign banking organization has a U.S. insured depository institution. In many cases, insured depository institution subsidiaries of foreign banks form a small percentage of their U.S. assets.

The stress-test requirements included in the domestic proposal for bank holding companies or nonbank financial companies supervised by the Board were finalized separately in 2012.[15] Furthermore, the Board continues to develop the single counterparty credit limits and early remediation requirements for bank holding companies and foreign banking organizations. With respect to single counterparty credit limits, the Basel Committee on Banking Supervision (Basel Committee)[16] is developing a similar large exposure regime that would apply to all global banks. The Board is participating in the Basel Committee's initiative and intends to take into account this effort in implementing the single counterparty credit limits under the Dodd-Frank Act. The Board also intends to take into account information gained through its quantitative impact study on the effects of the limit and comments received on the domestic and foreign proposals. With respect to early remediation requirements, the Board continues to review the comments.

Finally, the Board has determined not to impose enhanced prudential standards on nonbank financial companies supervised by the Board through this final rule. The Board intends separately to issue orders or

[13] 12 CFR 217.22(c)(4)–(5).

[14] See, e.g., Comprehensive Capital Analysis and Review 2014: Summary Instructions and Guidance (November 1, 2013), *available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131101a2.pdf.*

[15] On October 9, 2012, the Board issued a final rule implementing the supervisory and company-run stress-testing requirements for U.S. bank holding companies with total consolidated assets of $50 billion or more and for U.S. nonbank financial companies supervised by the Board. 77 FR 62378 (October 12, 2012).

[16] The Basel Committee is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. More information regarding the Basel Committee and its membership is *available at: http://www.bis.org/bcbs/about.htm.* Documents issued by the Basel Committee are available through the Bank for International Settlements Web site *available at: http://www.bis.org.*

rules imposing such standards on each nonbank financial company designated by the Council for Board supervision, as further described below.

The Board has consulted with all Council members and member agencies, including those that primarily supervise a functionally regulated subsidiary or depository institution subsidiary of a bank holding company or foreign banking organization subject to the proposals by providing periodic updates to agencies represented on the Council and their staff on the development of the final enhanced prudential standards.[17] The final rule reflects comments provided to the Board as a part of this consultation process. The Council has not made any formal recommendations under section 115 of the Dodd-Frank Act to date.

B. Major Changes From the Proposals

1. Threshold for Forming a U.S. Intermediate Holding Company

The foreign proposal would have required a foreign banking organization with U.S. non-branch assets of $10 billion or more to establish a U.S. intermediate holding company. Many commenters argued that the proposed threshold was too low, asserting that the U.S. operations of entities with $10 billion of U.S. non-branch assets do not present risks to U.S. financial stability. These commenters suggested that a minimum of $50 billion in U.S. non-branch assets is a more appropriate threshold for the U.S. intermediate holding company requirement.[18] After considering these comments and the other statutory considerations in section 165 of the Dodd-Frank Act, the Board is raising the final rule's threshold for the U.S. intermediate holding company requirement from $10 billion to $50 billion of U.S. non-branch assets.

2. Implementation Timing for Foreign Banking Organizations

The proposed rule would have required a foreign banking organization with U.S. non-branch assets of $50 billion or more as of July 1, 2014, to establish a U.S. intermediate holding company by July 1, 2015, unless that time were extended by the Board in writing.[19] A foreign banking organization with U.S. non-branch assets equal to or exceeding the asset threshold after July 1, 2014 would have been required to establish a U.S. intermediate holding company within 12 months after it met or exceeded the asset threshold, unless that time were accelerated or extended by the Board in writing. A number of commenters requested a longer transition period for the proposed requirements, citing the need to reorganize their U.S. operations and address attendant restructuring costs and tax costs, as well as the costs of compliance with other regulatory initiatives.[20]

In response to comments, the final rule would extend the initial compliance date for foreign banking organizations by one year to July 1, 2016.[21] The extended transition period would provide foreign banking organizations that exceed the asset threshold on the effective date of the rule with a reasonable transition period during which to prepare for the structural reorganization required by the final rule and for compliance with the enhanced prudential standards.

In order to ensure that foreign banking organizations are taking the necessary steps toward meeting the requirements of the final rule, the final rule requires a foreign banking organization that has U.S. non-branch assets of $50 billion or more as of June 30, 2014, to submit an implementation plan by January 1, 2015 outlining its proposed process to come into compliance with the rule's requirements.[22]

In addition, to address commenters' concerns about the cost of compliance with leverage capital requirements proposed for the U.S. intermediate holding company, the final rule generally delays application of leverage capital requirements to the U.S. intermediate holding company until January 1, 2018.

Finally, a foreign banking organization that has U.S. non-branch assets that equal or exceed $50 billion after July 1, 2015 has two years to come into compliance with the final rule, instead of 12 months under the proposal. These modifications to the transition period will enable a foreign banking organization to plan the transactions necessary to bring its U.S. subsidiaries under the U.S. intermediate holding company and mitigate costs.

3. Nonbank Financial Companies Supervised by the Board

The proposals would have provided that the standards applicable to bank holding companies and foreign banking organizations would serve as the baseline for enhanced prudential standards applicable to U.S. and foreign nonbank financial companies, respectively. Many commenters representing nonbank financial companies asserted that the proposed enhanced prudential standards were inappropriate for nonbank financial companies because of their business models and activities, as well as the existing regulatory regime applicable to certain nonbank financial companies. These commenters also expressed concern that the proposals as applied to nonbank financial companies supervised by the Board were too broad, and the proposals did not provide sufficient information for nonbank financial companies supervised by the Board to understand application of the proposed standards.

The Board recognizes that the companies designated by the Council may have a range of businesses, structures, and activities, that the types of risks to financial stability posed by nonbank financial companies will likely vary, and that the enhanced prudential standards applicable to bank holding companies and foreign banking organizations may not be appropriate, in whole or in part, for all nonbank financial companies. Accordingly, the Board is not applying enhanced prudential standards to nonbank financial companies supervised by the

[17] *See* 12 U.S.C. 5365(b)(4).

[18] These comments are discussed more fully below in section IV.B.3 of this preamble.

[19] Under the proposal, total consolidated assets of a foreign banking organization were determined based on the information provided through the Board's regulatory reporting forms, as discussed further below.

[20] These comments are discussed more fully below in section IV.B.2 of this preamble.

[21] The initial measurement date would be deferred from July 1, 2014 to July 1, 2015. Generally, the calculation will be based on the average of U.S. non-branch assets reported by the foreign banking organization on the FR Y–7Q for the four most recent quarters. If U.S. non-branch assets have not been reported on the FR Y–7Q for the full four most recent quarters, the calculation will be based on the average of the U.S. non-branch assets as reported on the FR Y–7Q for the most recent quarter or quarters. On July 1, 2016, the U.S. intermediate holding company would be required to hold the foreign banking organization's ownership interest in any U.S. bank holding company subsidiary, any depository institution subsidiary, and U.S. subsidiaries representing 90 percent of the foreign banking organization's assets not held under the bank holding company. The final rule would also provide a foreign banking organization until July 1, 2017, to transfer its ownership interest in any residual U.S. subsidiaries to the U.S. intermediate holding company.

[22] As described in section IV.B.5 of this preamble, the implementation plan is intended to facilitate compliance with the U.S. intermediate holding company requirement. The implementation plan must include: A list of the foreign banking organization's U.S. subsidiaries; a projected timeline for the transfer by the foreign banking organization of its ownership interest in those subsidiaries to the U.S. intermediate holding company; a timeline of all planned capital actions or strategies for capital accumulation that will facilitate the U.S. intermediate holding company's compliance with the risk-based and leverage capital requirements; quarterly pro forma financial statements for the U.S. intermediate holding company; and a plan for compliance with the liquidity and risk-management requirements in the final rule.

Board through this rulemaking. Instead, following designation of a nonbank financial company for supervision by the Board, the Board intends thoroughly to assess the business model, capital structure, and risk profile of the designated company to determine how the proposed enhanced prudential standards should apply, and if appropriate, would tailor application of the standards by order or regulation to that nonbank financial company or to a category of nonbank financial companies. In applying the standards to a nonbank financial company, the Board will take into account differences among nonbank financial companies supervised by the Board and bank holding companies with total consolidated assets of $50 billion or more. For those nonbank financial companies that are similar in activities and risk profile to bank holding companies, the Board expects to apply enhanced prudential standards that are similar to those that apply to bank holding companies. For those that differ from bank holding companies in their activities, balance sheet structure, risk profile, and functional regulation, the Board expects to apply more tailored standards. The Board will ensure that nonbank financial companies receive notice and opportunity to comment prior to determination of their enhanced prudential standards.

4. Other Changes

In the final rule, the Board also restructured the rule text of the domestic and foreign proposals to organize the text by type of company—domestic or foreign—and by the size of the company. The purpose of the reorganization is to improve the usability of the text by grouping requirements applicable to a company based on these criteria in one subpart.

To facilitate this reorganization, the Board has previously moved the adopted stress testing requirements to the appropriate subparts.[23] Following the reorganization, the company-run stress test requirements for domestic bank holding companies with total consolidated assets of more than $10 billion but less than $50 billion and for domestic savings and loan holding companies and state member banks with total consolidated assets of more than $10 billion are contained in subpart B, the supervisory stress tests for bank holding companies with total consolidated assets of $50 billion or more are contained in subpart E, and the company-run stress tests for bank holding companies of this size are contained in subpart F.

Table 1, below, sets forth the requirements in the final rule that apply to bank holding companies and Table 2 sets forth the requirements in the final rule that apply to foreign banking organizations, each depending on size.

TABLE 1—REQUIREMENTS FOR U.S. BANK HOLDING COMPANIES

Size	Requirements	Subpart
Total consolidated assets of more than $10 billion but less than $50 billion.	Company-run stress tests	Subpart B.
Total consolidated assets equal to or greater than $10 billion but less than $50 billion (if publicly-traded).	Risk committee	Subpart C.
Total consolidated assets of $50 billion or more	Risk-based and leverage capital	Subpart D.
	Risk management	
	Risk committee	
	Liquidity risk-management, stress-testing, and buffers	
	Supervisory stress tests	Subpart E.
	Company-run stress tests	Subpart F.
	Debt-to-equity limits (upon grave threat determination)	Subpart U.

TABLE 2—REQUIREMENTS FOR FOREIGN BANKING ORGANIZATIONS

Size	Requirements	Subpart
Total consolidated assets of more than $10 billion but less than $50 billion.	Company-run stress tests	Subpart L.
Total consolidated assets equal to or greater than $10 billion but less than $50 billion (if publicly-traded).	Risk committee	Subpart M.
Total consolidated assets of $50 billion or more, but combined U.S. assets of less than $50 billion.	Risk-based and leverage capital	Subpart N.
	Risk management	
	Risk committee	
	Liquidity	
	Capital stress testing	
	Debt to equity limits (upon grave threat determination)	Subpart U.
Total consolidated assets of $50 billion or more, and combined U.S. assets of $50 billion or more.	Risk-based and leverage capital	Subpart O.
	Risk management	
	Risk committee	
	Liquidity risk management, liquidity stress testing, and buffer	
	Capital stress testing	
	U.S. intermediate holding company requirement (if the foreign banking organization has U.S. non-branch assets of $50 billion or more).	Subpart O.
	Debt-to-equity limits (upon grave threat determination)	Subpart U.

If an institution increases in asset size, it will become subject to the subpart applicable to institutions of that size. On the date it becomes subject to the substantive requirements of a new subpart, it will cease to be subject to

[23] *See* 79 FR 13498.

requirements of the subpart for smaller institutions.

C. Application to Savings and Loan Holding Companies Engaged in Substantial Banking Activities

With the exception of company-run stress-tests, the domestic proposal did not propose to apply the enhanced prudential standards to savings and loan holding companies.[24] The domestic proposal indicated that the Board intends to issue a separate proposal for notice and comment initially to apply the enhanced prudential standards and early remediation requirements to all savings and loan holding companies with substantial banking activities—for example, any savings and loan holding company that: (i) Has total consolidated assets of $50 billion or more; and (ii)(A) controls savings association subsidiaries that comprise 25 percent or more of such savings and loan holding company's total consolidated assets; or (B) controls one or more savings associations with total consolidated assets of $50 billion or more. The preamble to the domestic proposal indicated that the Board also may determine to apply the enhanced prudential standards to any savings and loan holding company, if appropriate to ensure the safety and soundness of such company, on a case-by-case basis.

Commenters argued that the Home Owners' Loan Act does not provide the Board with authority to apply enhanced prudential standards and early remediation requirements to savings and loan holding companies, and doing so would contradict Congress's intent to apply only the section 165 requirements regarding company-run stress-test requirements to savings and loan holding companies. However, the Board, as the appropriate federal banking agency of savings and loan holding companies, has authority under the Home Owners' Loan Act to apply prudential standards to savings and loan holding companies to help to ensure their safety and soundness.[25] The Board recently established risk-based and leverage capital requirements for certain savings and loan holding companies and has set forth supervisory expectations regarding, among other things, liquidity risk management and enterprise-wide risk management.[26] As discussed in the domestic proposal, the Board may apply additional prudential requirements to certain savings and loan holding companies that are similar to the enhanced prudential standards if it determines that such standards are consistent with the safety and soundness of such companies.

III. Enhanced Prudential Standards for Bank Holding Companies

A. Enhanced Risk-Based and Leverage Capital Requirements, Capital Planning and Stress Testing

1. Capital Planning and Stress Testing

The final rule, consistent with the proposal, incorporates two existing standards: The previously-issued capital-planning and stress-testing requirements for bank holding companies with total consolidated assets of $50 billion or more.[27] The Board has long held the view that a bank holding company generally should hold capital that is commensurate with its risk profile and activities, so that the firm can meet its obligations to creditors and other counterparties, as well as continue to serve as a financial intermediary through periods of financial and economic stress.[28] A bank holding company should have internal processes for assessing its capital adequacy that reflect a full understanding of its risks and ensure that it holds capital corresponding to those risks to maintain overall capital adequacy.[29]

In 2011, the Board adopted the capital plan rule (capital plan rule), which imposed enhanced risk-based and leverage capital requirements on a bank holding company with $50 billion or more in total consolidated assets. The rule requires such a bank holding company to submit an annual capital plan to the Federal Reserve in which it demonstrates its ability to maintain capital above the Board's minimum risk-based capital ratios under both baseline and stressed conditions over a minimum nine-quarter, forward-looking planning horizon. Such plan must also include a discussion of the bank holding company's sources and uses of capital reflecting the risk profile of the firm over the planning horizon. Since the adoption of the capital plan rule, the Board's Comprehensive Capital Analysis and Review associated with capital plans submitted by those bank holding companies has become an important and regular part of the Federal Reserve's capital adequacy assessment of the largest bank holding companies.

In 2012, the Board, in coordination with the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC), adopted stress testing rules under section 165(i)(1) of the Dodd-Frank Act for large bank holding companies and nonbank financial companies supervised by the Board. These rules establish a framework for the Board to conduct annual supervisory stress tests to evaluate whether these companies have the capital necessary to absorb losses as a result of adverse economic conditions and require these companies to conduct semi-annual company-run stress tests.[30]

In addition, the Board adopted company-run stress test requirements under section 165(i)(2) of the Dodd-Frank Act for bank holding companies with more than $10 billion but less than $50 billion in total consolidated assets and savings and loan holding companies and state member banks with more than $10 billion in total consolidated assets.[31] The FDIC and OCC adopted similar rules for the insured depository institutions that they supervise.[32]

In September 2013, the Board issued an interim final rule that clarified how bank holding companies should incorporate recent revisions to the Board's regulatory capital rules into their capital plan and the stress tests.[33]

2. Risk-Based Capital and Leverage Requirements

In July 2013, the Board issued a final rule implementing regulatory capital reforms reflecting agreements reached by the Basel Committee in ''Basel III: A

[24] In October 2012, the Board adopted a final rule implementing company-run stress testing requirements for savings and loan holding companies with total consolidated assets greater than $10 billion. *See* 77 FR 62396 (October 12, 2012).

[25] *See* 12 U.S.C. 1467a(g) (authorizing the Board to issue such regulations and orders as the Board deems necessary or appropriate to administer and carry out the purposes of section 10 of the Home Owners' Loan Act).

[26] *See, e.g.,* 78 FR 62018 (October 11, 2013); Supervision and Regulation Letter 11–11 (July 21, 2011), *available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1111.htm.*

[27] 12 CFR 225.8. *See* 76 FR 74631 (December 1, 2011). The capital plan rule currently applies to all U.S. bank holding companies with $50 billion or more in total consolidated assets, except for those bank holding companies that have relied on Supervision & Regulation Letter 01–01 (January 5, 2001), *available at: http://www.federalreserve.gov/boarddocs/srletters/2001/sr0101.htm.*

[28] *See* Supervision and Regulation Letter 12–17 (December 12, 2012), *available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm*; 12 CFR Part 217; 12 CFR 225.8; Supervision and Regulation Letter 99–18 (July 1, 1999), *available at: http://www.federalreserve.gov/boarddocs/srletters/1999/SR9918.HTM.*

[29] *See* e.g., Supervision and Regulation Letter 09–4 (March 27, 2009); *available at: http://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm*; 12 CFR 225.8.

[30] 77 FR 62378 (Oct. 12, 2012) (codified at 12 CFR part 252, subparts F and G). These rules have been re-codified to 12 CFR part 252, subparts E and F.

[31] *See* 77 FR 62396 (October 12, 2012).

[32] 77 FR 61238 (October 9, 2012); 77 FR 62417 (October 15, 2012).

[33] *See* 78 FR 59779 (September 30, 2013).

Global Regulatory Framework for More Resilient Banks and Banking Systems'' (Basel III) [34] and certain changes required by the Dodd-Frank Act (revised capital framework).[35] The revised capital framework introduced a new minimum common equity tier 1 capital ratio of 4.5 percent, raised the minimum tier 1 ratio from 4 percent to 6 percent, required all banking organizations to meet a 4 percent minimum leverage ratio, implemented stricter eligibility criteria for regulatory capital instruments, and introduced a standardized methodology for calculating risk-weighted assets. In addition, it required bank holding companies with total consolidated assets of $250 billion or more or total consolidated on-balance sheet foreign exposures of at least $10 billion (advanced approaches banking organizations) to meet a supplementary leverage ratio of 3 percent based on the international leverage standard agreed to by the Basel Committee.

To further enhance capital standards for the largest companies that pose the most systemic risk, in July 2013, the Board sought public comment on a proposal that, in part, would require a U.S. top-tier bank holding company with more than $700 billion in total consolidated assets or $10 trillion in assets under custody to maintain a buffer of at least 2 percent above the minimum supplementary leverage capital requirement of 3 percent in order to avoid restrictions on capital distributions and discretionary bonus payments to executive officers.[36] The Board is currently reviewing comments on that proposal. The Board also expects to seek comment on additional enhancements to the risk-based capital rules for large bank holding companies in the future, including through a proposal for a quantitative risk-based capital surcharge in the United States based on the Basel Committee's approach and implementation timeframe.

B. Risk Management and Risk Committee Requirements

Section 165(b)(1)(A) of the Dodd-Frank Act requires the Board to establish enhanced risk-management requirements for bank holding companies with total consolidated assets of $50 billion or more.[37] In addition, section 165(h) of the Dodd-Frank Act directs the Board to issue regulations requiring publicly traded bank holding companies with total consolidated assets of $10 billion or more to establish risk committees.[38] Section 165(h) requires the risk committee to be responsible for the oversight of the enterprise-wide risk-management practices of the company, to have a certain number of independent directors as members as the Board determines is appropriate, and to include at least one risk-management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

To address the risk-management weaknesses observed during the financial crisis, the proposed rule would have established risk-management standards for bank holding companies with total consolidated assets of $50 billion or more that would have required oversight of enterprise-wide risk management by a stand-alone risk committee; reinforced the independence of a firm's risk-management function; and required employment of a chief risk officer with appropriate expertise and stature. In addition, the proposal would have required each publicly traded bank holding company with total consolidated assets equal to or greater than $10 billion but less than $50 billion to establish an enterprise-wide risk committee of its board of directors. The proposal would not have applied to bank holding companies that have assets of less than $10 billion.

The Board is adopting many aspects of the proposed rule, with revisions to certain elements of the proposed rule in response to commenters, as described further below in this section. The Board emphasizes that the risk committee and overall risk-management requirements outlined in the final rule supplement the Board's existing risk-management guidance and supervisory expectations.[39] All banking organizations supervised by the Board should continue to follow such guidance to ensure appropriate oversight of and limitations on risk.

1. Responsibilities of the Risk Committee

Under the proposal, a company's risk committee would generally have been required to document, review, and approve the enterprise-wide risk-management practices of the company. The risk committee would have overseen the operation, on an enterprise-wide basis, of an appropriate risk-management framework that is commensurate with the company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. The proposal specified that the risk-management framework must include: Risk limitations appropriate to each business line of the company; appropriate policies and procedures relating to risk management governance, risk-management practices, and risk control infrastructure; processes and systems for identifying and reporting risks, including emerging risks; monitoring of compliance with the company's risk limit structure and policies and procedures relating to risk management governance, practices, and risk controls; effective and timely implementation of corrective actions; specification of management and employees' authority and independence to carry out risk management responsibilities; and integration of risk management and control objectives in management goals and the company's compensation structure. The enterprise-wide focus would have required the company's risk committee to take into account both its U.S. and foreign operations as part of its risk-management oversight.

Many commenters asserted that the proposed rule would inappropriately assign managerial and operational responsibilities to the risk committee. These commenters generally recommended that the Board clarify that a risk committee is not responsible for the day-to-day operations of the company. In particular, some

[34] Basel III was published in December 2010 and revised in June 2011. *See* Basel Committee, Basel III: *A global framework for more resilient banks and banking systems* (December 2010), *available at: http://www.bis.org/publ/bcbs189.pdf.*

[35] *See* 78 FR 62018 (October 11, 2013). The revised capital framework also reorganized the Board's capital adequacy guidelines into a harmonized, codified set of rules, located at 12 CFR Part 217. The requirements of 12 CFR Part 217 came into effect on January 1, 2014, for bank holding companies subject to the advanced approaches risk-based capital rule, and as of January 1, 2015 for all other bank holding companies. The predecessor capital adequacy guidelines for bank holding companies are found at 12 CFR part 225, Appendix A (general risk-based capital rule), 12 CFR part 225, Appendix D (leverage rule), 12 CFR part 225, Appendix E (market risk rule), and 12 CFR part 225, Appendix G (advanced approaches risk-based capital rule).

[36] 78 FR 51101 (August 20, 2013). The proposal applies to ''a U.S. top-tier bank holding company that has more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y–9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (FR Y–15).'' *Id.*

[37] 12 U.S.C. 5365(b)(1)(A).

[38] 12 U.S.C. 5365(h).

[39] *See* Supervision and Regulation Letter SR 08–8 (October 16, 2008), *available at: http://www.federalreserve.gov/boarddocs/srletters/2008/SR0808.htm*; Supervision and Regulation Letter SR 08–9 (October 16, 2008), *available at: http://www.federalreserve.gov/boarddocs/srletters/2008/SR0809.htm;* Supervision and Regulation Letter SR 12–17 (December 17, 2012), *available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm.*

commenters asserted that the proposed requirement that the risk committee ''document, review, and approve the enterprise-wide risk-management practices of the company'' would not be consistent with the proper scope of a committee of the board of directors because it would require the board to assume responsibilities typically performed by management. These commenters recommended that the role of the risk committee be limited to reviewing and approving overall risk-management policies.

In light of commenters' concerns, the Board has revised the requirements in the final rule to clarify the role of the risk committee. A company's risk committee, acting in its oversight role, should fully understand the company's enterprise-wide risk-management policies and framework and have a general understanding of the risk management practices of the company. Accordingly, the final rule requires the risk committee to approve and periodically review the enterprise-wide risk-management policies of the company, rather than its risk-management practices. The Board believes that the requirement that the risk committee ''approve and periodically review'' the company's enterprise-wide risk-management policies is more closely aligned with the board of directors' oversight role over risk management. Furthermore, the Board has not included in the final rule the requirement that the risk management framework overseen by the risk committee include specific risk limitations for each business line of the company.

The other elements of the enterprise-wide risk management framework under the proposal, however, represent the key components of an institution's risk-management function, and are generally consistent with the board of directors' overall responsibilities for risk management. Accordingly, other than as described above, the final rule adopts the elements of the enterprise-wide risk-management framework generally as proposed. As finalized, a company's risk management framework must be commensurate with the company's structure, risk profile, complexity, activities, and size, and must include policies and procedures establishing risk-management governance, risk-management practices, and risk control infrastructure for the company's global operations and processes and systems for implementing and monitoring compliance with such policies and procedures.[40]

One commenter asserted that effective risk oversight requires the attention of a company's full board of directors, rather than its risk committee. The commenter recommended that a company's full board of directors approve and oversee its risk-management policies. The Board agrees that directors should be aware of the risk-management policies of the company, and the Board expects that the risk committee will report significant risk-management matters to the full board of directors. The Board observes, however, that boards of directors routinely delegate oversight responsibilities for particular aspects of a company's operations to committees in order to more efficiently allocate responsibility among the directors. In addition, this delegation is consistent with the requirements of the Dodd-Frank Act. Accordingly, the final rule maintains the proposed requirement that the risk committee oversee enterprise-wide risk management.

One commenter recommended that the Board require companies to engage in a regular process of ''constructive dialogue'' among the board of directors, business lines, and risk management personnel. The Board believes that robust dialogue among these key stakeholders is important for effective risk management, and believes that the proposed and final rule already requires such communication in specific instances, for instance, by requiring a bank holding company's risk-management framework to include processes and systems for identifying and reporting risks and risk management deficiencies. Accordingly, the Board is not adding a separate requirement for ''constructive dialogue.''

In addition, various liquidity risk-management responsibilities are assigned to the board of directors or risk committee, as discussed in section III.C.2. These liquidity risk-management responsibilities are components of the risk-management framework described in this section.

[40] The processes and systems must include those for identifying and reporting risks and risk-management deficiencies, including with respect to emerging risks and ensuring effective and timely implementation of corrective actions to address risk management deficiencies for the company's global operations; processes and systems for specifying managerial and employee responsibility for risk management, for ensuring the independence of the risk management function; and processes and systems to integrate management and associated controls with management goals and the company's compensation structure for the company's global operations.

2. Risk Committee Requirements

a. Independent Director

Consistent with section 165(h)(3)(B) of the Dodd-Frank Act, the proposed rule would have required the risk committee of a publicly traded[41] bank holding company with total consolidated assets of $10 billion or more to have one independent director that was the chair of the risk committee. The proposal would have defined an independent director as a director who: (i) Is not an officer or employee of the company and had not been an officer or employee of the company during the previous three years; (ii) is not a member of the immediate family, as defined in section 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(3)), of a person who is, or has been within the last three years, an executive officer of the company, as defined in section 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)); and (iii) is an independent director under Item 407 of the Securities and Exchange Commission's (SEC) Regulation S–K, 17 CFR 229.407(a), or would qualify as an independent director under the listing standards of a national securities exchange (as demonstrated to the satisfaction of the Board) in the event that the company does not have an outstanding class of securities traded on a national securities exchange. For companies that are not publicly traded in the United States, the Board indicated that it would make determinations about director independence on a case-by-case basis, and would consider compensation paid to the director or director's family by the company and material business relationships between the director and the company, among other things. The Board specifically sought comment on whether, and under what circumstances, the Board should require more than one independent director on the risk committee.

Some commenters supported the independent director requirement, although they generally opposed an increase in the number of independent directors required because, in their view, participation by management and other non-independent directors could enhance the deliberations of the risk committee. Two commenters, however, urged the Board to increase the number of independent directors required on the

[41] The proposal provided that a company is publicly traded if it is traded on any exchange registered with the Securities and Exchange Commission under Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) or on any non-U.S.-based securities exchange that meets certain criteria.

risk committee to ensure that members of the risk committee have a diversity of experiences. The Board is finalizing the requirement to have one independent director that chairs the risk committee as proposed. The Board believes that a bank holding company should determine the appropriate proportion of independent directors on the risk committee based on its size, scope, and complexity, provided that it meets the minimum requirement of one independent director. The Board believes that active involvement of independent directors can be vital to robust oversight of risk management and encourages companies to consider including additional independent directors as members of their risk committees. The Board further notes that involvement of directors affiliated with the company on the risk committee may complement the involvement of independent directors.

b. Risk-Management Experience

Under the proposal, at least one member of a bank holding company's risk committee would have been required to have risk-management expertise that was commensurate with the company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. The proposal defined risk-management expertise as an understanding of risk management principles and practices with respect to bank holding companies or depository institutions; the ability to assess the general application of such principles and practices; and experience developing and applying risk-management practices and procedures, measuring and identifying risks, and monitoring and testing risk controls with respect to banking organizations or, if applicable, nonbank financial companies. This requirement was intended to ensure that the company's risk committee has at least one member with the background and experience necessary to evaluate the company's risk-management policies and practices.

Several commenters criticized the proposed definition of risk-management expertise as being too stringent and suggested that the proposal would result in a shortage of qualified candidates to serve on risk committees. For instance, some commenters argued that the rule should recognize that risk-management experience could be acquired in fields other than banking. Other commenters argued that the definition of risk-management expertise was too limiting and asserted that it was not realistic to require a director to fulfill all of the proposed requirements. Other commenters suggested that the Board adopt a definition of risk-management expertise that is similar to the SEC's definition of audit committee financial expert, which generally focuses on ''an individual's understanding of relevant principles, the ability to assess the application of such principles, and experience that is commensurate with the breadth and complexity of issues to be raised, among other factors.'' [42] Some commenters raised concerns that some of the Board's statements in the preamble to the proposed rule suggested that more than one member of the risk committee would be required to have risk-management expertise.

In light of these comments, the final rule revises the proposed ''risk management expert'' requirement for the risk committee in two ways. First, for a publicly traded bank holding company with total consolidated assets equal to or greater than $10 billion but less than $50 billion, an individual's risk-management experience in a nonbanking or nonfinancial field may fulfill the requirements of the final rule. For instance, relevant experience could include risk-management experience acquired through executive-level service at a large nonfinancial company with a high risk profile and above-average complexity. For a bank holding company with total consolidated assets of $50 billion or more, the final rule requires that an individual have experience in identifying, assessing, and managing risk exposures of large, complex financial firms. For this purpose, a financial firm could include a bank, a securities broker-dealer, or an insurance company, provided that the experience is relevant to the particular risks facing the company. For all bank holding companies, the Board expects that the individual's experience in risk management would be commensurate with the bank holding company's structure, risk profile, complexity, activities, and size, and the bank holding company should be able to demonstrate that an individual's experience is relevant to the particular risks facing the company.

Second, in response to commenters asserting that the proposed definition of ''risk management expertise'' was too limiting, the final rule would require that a risk committee have a member with experience in ''identifying, assessing, and managing risk exposures'' of large, complex firms.[43] While the proposed definition of risk-management expertise generally set forth the types of experience that the Board would expect a risk-management expert to have, in some circumstances, a person may have an appropriate level of risk-management expertise without direct experience in each area cited in the proposed rule.

The final rule requires that only one member of the committee have experience in identifying, assessing, and managing risk exposures of large, complex firms. However, the Board would expect all risk committee members generally to have an understanding of risk management principles and practices relevant to the company. The appropriate level of risk-management expertise for a company's risk committee can vary depending on the risks posed by the company to the stability of the U.S. financial system. Accordingly, the risk committee of a company that poses more systemic risk should have more risk committee members with commensurately greater understandings of risk management principles and practices.

Two commenters urged the Board to include a requirement that members of the risk committee receive continuing education and training specifically related to risk management. Although the Board supports ongoing risk management education and training for risk committee members, the Board is not including this requirement in the final rule because it does not believe that the benefits of such education and training would justify the burden of imposing such a requirement for all bank holding companies of this size.

c. Corporate Governance

The Board also proposed to establish certain corporate governance requirements for risk committees. Specifically, under the proposal, a company's risk committee would have been required to have a formal, written charter that is approved by the company's board of directors. The Board is finalizing this requirement as proposed. In addition, the proposal would have required that a risk committee meet regularly and as needed. To provide more specificity, and because quarterly meetings of board committees are standard in the financial industry, the final rule requires that a risk committee meet at least quarterly and otherwise as needed.

The proposal also would have required that a risk committee fully document and maintain records of its proceedings, including risk management decisions. One commenter opposed the requirement that a risk committee document its ''risk management decisions.'' The commenter asserted

[42] 17 CFR 228.407(d)(5)(ii).

[43] As noted above, in the case of a bank holding company with total consolidated assets of $50 billion or more, the experience must be with respect to financial firms.

that management, rather than a board of directors, makes decisions on risk management practices and procedures. As discussed further below, the Board has clarified in the final rule that the risk committee is responsible for the oversight of risk-management policies, rather than for its risk-management practices. The Board believes that it is important for a risk committee to document its decisions relating to risk-management policies and, accordingly, the Board is finalizing this aspect of the requirement as proposed.

3. Risk Committee for Bank Holding Companies With Total Consolidated Assets of More Than $10 Billion and Less Than $50 Billion

A few commenters expressed concern about the effect of the proposed rule on smaller bank holding companies, including publicly traded bank holding companies with total consolidated assets of less than $50 billion. One commenter recommended that for bank holding companies with less than $50 billion in total consolidated assets, the Board allow for flexibility with respect to board member qualifications, risk-committee structure, and the reporting structure for risk management executives. Another commenter asserted that the risk committee requirement for bank holding companies with total consolidated assets of less than $50 billion is an unreasonable and unnecessary burden on community banks. A commenter also expressed concern that the more stringent risk-management standards in the proposal might be applied to bank holding companies with less than $10 billion in total consolidated assets.

Section 165(h) requires publicly traded bank holding companies with total consolidated assets of $10 billion or more to establish risk committees. The final rule implements this statutory requirement. The Board observes that larger and more complex companies should have more robust risk-management practices and frameworks than smaller, less complex companies. As a company grows or increases in complexity, the company's risk committee should ensure that its risk-management practices and framework adapt to changes in the company's operations and the inherent level of risk posed by the company to the U.S. financial system. The Board believes that the risk committee structure and responsibilities in the final rule are therefore appropriate for publicly traded bank holding companies with at least $10 billion but less than $50 billion in total consolidated assets, as they address corporate governance issues common among bank holding companies of various sizes. However, as explained above, the Board does not expect board members of bank holding companies with total consolidated assets of less than $50 billion to have risk-management expertise comparable to that of board members of larger bank holding companies. Furthermore, the Board notes that the final rule does not apply the risk-committee requirements to bank holding companies with less than $10 billion in assets or to those that are not publicly traded and have assets of less than $50 billion.

Another commenter expressed concern that the standards in the proposal for the qualifications, responsibilities, and role of a chief risk officer described below could be applied to a smaller company through supervisory examinations. The final rule, consistent with the proposal, would impose a chief risk officer requirement only on bank holding companies with total consolidated assets of $50 billion or more.

4. Additional Enhanced Risk-Management Standards for Bank Holding Companies With Total Consolidated Assets of $50 Billion or More

In accordance with section 165(b)(1)(A)(iii) of the Dodd-Frank Act, the proposed rule would have established certain overall risk-management standards for bank holding companies with total consolidated assets of $50 billion or more. These enhanced prudential standards are in addition to the risk committee requirements discussed above.

a. Additional Risk Committee Requirements

Under the proposed rule, risk committees of bank holding companies with total consolidated assets of $50 billion or more would have been required to meet certain requirements in addition to those provided in the proposal for bank holding companies with total consolidated assets equal to or greater than $10 billion but less than $50 billion because of the risk posed to financial stability by these firms. For instance, the proposal would have required that such a banking organization's risk committee not be housed within another committee or be part of a joint committee, report directly to the bank holding company's board of directors, and receive and review regular reports from the bank holding company's chief risk officer.

Several commenters objected to the proposed stand-alone risk committee requirement. These commenters generally asserted that a banking organization should be given flexibility to determine how to structure its risk committee based on the company's business strategy and risk profile. Some commenters requested that the final rule permit the use of joint risk committees by a banking organization and its subsidiaries. A few commenters asserted that it is common practice for a risk committee at a holding company also to serve as the risk committee for its subsidiaries and that this practice can improve the understanding, monitoring, and evaluation of risks throughout the organization. One commenter recommended that the final rule allow a banking organization to combine its risk and finance committees in order to ensure strong oversight of capital, liquidity, and stress testing. Similarly, a few commenters asserted that the final rule should permit a board of directors to allocate risk-management oversight responsibilities to various committees, and not solely to the risk committee.

Appropriate oversight by the board of directors of the risks undertaken by complex banking organizations requires significant knowledge, experience, and time. Therefore, it is important for a bank holding company with total consolidated assets of $50 billion or more to have a separate committee of its board of directors devoted to risk-management oversight. The Board notes that this is also consistent with industry practice, as large, complex banking organizations commonly have a risk committee of the board of directors that is distinct from other committees of the board. The risk committee may have members that are on other board committees, and other board committees, such as audit or finance, may have some involvement in establishing a banking organization's risk management framework. However, a stand-alone risk committee, rather than a joint risk/audit or risk/finance committee, enables appropriate board-level attention to risk management. The final rule therefore retains the requirement for a separate risk committee, and clarifies that the risk committee may not be part of a joint committee. This requirement would prevent the risk committee from having other substantive responsibilities at the bank holding company. The rule does not prevent a parent company's risk committee from serving as the risk committee for one or more of its subsidiaries as long as the requirements of the rule are otherwise satisfied.

As noted above, the proposal would have required a bank holding company's risk committee to report directly to the company's board of directors. In

addition, the proposed rule would have directed a banking organization's risk committee to receive and review regular reports from the chief risk officer. These requirements were intended to ensure the proper flow of information regarding risk management within a banking organization. One commenter recommended that the Board specify the procedures to be followed when risk levels rise at an institution. The Board believes that a bank holding company should be able to establish procedures appropriate to its operations, provided that the chief risk officer reports material risk issues to the board of directors or the risk committee. The final rule clarifies that ''regular reports'' must be provided not less than quarterly.

b. Chief Risk Officer

i. Appointment and Qualifications

Under the proposal, each bank holding company with total consolidated assets of $50 billion or more would have been required to appoint a chief risk officer to implement appropriate enterprise-wide risk-management practices for the company. The chief risk officer would have been required to have risk-management expertise commensurate with the bank holding company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors.

A few commenters opposed the proposed requirement that a bank holding company with total consolidated assets of $50 billion or more appoint a designated chief risk officer. The commenters asserted that the appointment of a specific risk management position should be left to the discretion of a company. Considering the complexity and size of the operations of a bank holding company of this size, the Board believes that it is important for the bank holding company to have a designated executive in charge of implementing and maintaining the risk management framework and practices approved by the risk committee. Accordingly, the final rule requires each bank holding company with total consolidated assets of $50 billion or more to appoint a chief risk officer.

Several commenters opposed the risk-management expertise requirements in the proposal. Some commenters asserted that management and the board of directors should be able to determine what combination of skill, experience, and education is appropriate for the chief risk officer given the company's culture, business strategy, and risk profile. Other commenters opined that the risk-management field is still developing educational and expertise standards and urged the Board not to adopt specific educational or professional requirements for the chief risk officer. One commenter asked for clarification as to whether the standards for chief risk officer qualification would be applied prospectively or retroactively to existing chief risk officers.

The Board believes that although a company generally should have flexibility to determine the particular qualifications it desires in a chief risk officer, because of the risks posed by bank holding companies with total assets of $50 billion or more, a chief risk officer should satisfy certain minimum standards. Accordingly, and similar to the risk-committee requirements, the final rule would revise the ''risk management expertise'' requirement to focus on an individual's experience in identifying, assessing, and managing exposures of large, complex financial firms rather than on his or her subjective ability to understand risk management principles and practices and assess the general application of such principles and practices. The Board believes that focusing on an individual's risk-management experience and demonstrated ability to apply that expertise to risk management provides a more reliable and objective method for bank holding companies and supervisors to assess an individual's fitness to serve as a chief risk officer.

The minimum standards for a company's chief risk officer of the final rule are similar to the risk-management experience requirement for the risk committee of a bank holding company with total consolidated assets of $50 billion or more, as discussed above. In every case, the Board expects that a bank holding company should be able to demonstrate that its chief risk officer's experience is relevant to the particular risks facing the company and commensurate with the bank holding company's structure, risk profile, complexity, activities, and size. All of the requirements for a chief risk officer, including the risk-management experience requirement, will become effective on January 1, 2015, for bank holding companies. At that time, bank holding companies with total consolidated assets of $50 billion or more will be required to employ a chief risk officer who meets the requirements of the final rule, regardless of how the banking organization managed risk prior to the effective date of the final rule.

ii. Responsibilities

Under the proposal, the chief risk officer would have had direct oversight over: Establishment of risk limits and monitoring compliance with such limits; implementation and ongoing compliance with appropriate policies and procedures relating to risk management governance, practices, and risk controls; developing and implementing appropriate processes and systems for identifying and reporting risks, including emerging risks; managing risk exposures and risk controls; monitoring and testing risk controls; reporting risk management issues and emerging risks; and ensuring that risk management issues are effectively resolved in a timely manner.

Several commenters criticized the responsibilities of the chief risk officer under the proposed rule. Some commenters opposed the requirement that the chief risk officer ''directly'' oversee risk-management functions because the chief risk officer works with, and through, individual business units that have a primary role in managing risks in their businesses. Another commenter asserted that the list of responsibilities included matters not appropriately assigned to risk managers, such as the development of processes and systems for identifying and reporting risks, which the commenter asserted are often performed by information technology groups. Another commenter argued that the responsibilities of the chief risk officer should be more general and comprehensive.

The Board agrees that the chief risk officer may execute his or her responsibilities by working with, or through, others in the organization. The final rule does not include the proposed requirement that the chief risk officer have ''direct'' oversight over the enumerated responsibilities or perform the functions that carry out those responsibilities. Notwithstanding involvement of other departments within the organization in the execution of the processes enumerated above, the Board believes that each responsibility described in the proposed rule is primarily a risk-management function and, therefore, is appropriately assigned to the chief risk officer as the officer of the company responsible for ensuring those risk management responsibilities are carried out. The Board is finalizing these requirements generally as proposed.

The final enhanced liquidity risk managements standards set forth certain responsibilities of senior management, as discussed in section III.C.2 of this

preamble. A company may assign the responsibilities assigned to senior management to its chief risk officer, as this officer would be considered a member of the senior management of a company.

iii. Reporting Lines

The proposal would have required a chief risk officer to report directly to the risk committee and the bank holding company's chief executive officer. Several commenters opposed the proposed requirement that a chief risk officer report directly both to the risk committee and the chief executive officer of the company. Some commenters asserted that the chief risk officer should report only to the chief executive officer and not to the risk committee because reporting to the board could interfere with the chief risk officer's ability to influence senior management. Other commenters asserted that the chief risk officer should report only to the risk committee because this would allow direct access to an independent director without managerial influence. Finally, several commenters urged the Board not to specify a reporting structure in the final rule to preserve flexibility for each bank holding company with total consolidated assets of $50 billion or more to structure its reporting requirements as it deems appropriate.

The Board believes that dual reporting by the chief risk officer to both the risk committee and the chief executive officer will help the board of directors to oversee the risk-management function and may help disseminate information relevant to risk management throughout the organization. Furthermore, guidance issued by the Basel Committee and the Financial Stability Board (FSB) supports dual reporting by the chief risk officer to the risk committee and the chief executive officer.[44] Thus, the Board is finalizing the chief risk officer reporting requirements as proposed.

iv. Compensation

The proposal also would have required the compensation of a bank holding company's chief risk officer to be structured to provide for an objective assessment of the risks taken by the company. One commenter opposed the compensation requirement, asserting that the proposed pay structure would not allow for discretion in crafting a compensation model and that compensation committees are best suited to approve decisions regarding executive pay programs.

The Board observes that the proposed requirement would not prevent a company from using discretion in adopting a compensation structure for its chief risk officer, whether through its compensation committee or otherwise, as long as the structure of the chief risk officer's compensation provides for an objective assessment of risks. Accordingly, the Board is adopting the substance of this requirement as proposed. In addition, the Board notes that this requirement supplements existing Board guidance on incentive compensation, which provides, among other things, that compensation for employees in risk management and control functions should avoid conflicts of interest and that incentive compensation received by these employees should not be based substantially on the financial performance of the business units that they review.[45]

C. Liquidity Requirements for Bank Holding Companies

1. General

Section 165(b) of the Dodd-Frank Act directs the Board to adopt enhanced liquidity requirements for bank holding companies with total consolidated assets of $50 billion or more.[46] The domestic proposal would have required that a bank holding company establish a framework for the management of liquidity risk, conduct monthly liquidity stress tests, and maintain a buffer of highly liquid assets to cover cash-flow needs under stressed conditions.

The requirements in the proposed and final rule build on the Board's overall supervisory framework for liquidity adequacy and liquidity risk management. This framework includes supervisory guidance set forth in the Board's Supervision and Regulation (SR) letter 10–6, Interagency Policy Statement on Funding and Liquidity Risk Management issued in March 2010 (Interagency Liquidity Risk Policy Statement), which was based substantially on the Basel Committee's ''Principles for Sound Liquidity Risk Management and Supervision'' (Basel Committee principles for liquidity risk management).[47] The final rule is designed to provide a regulatory framework for ensuring that bank holding companies with total consolidated assets of $50 billion or more establish and maintain robust liquidity risk management practices, perform internal stress tests for determining the adequacy of their liquidity resources, and maintain a buffer of highly liquid assets in the United States to cover cash flow needs under stress. In addition, the Board intends to use the supervisory process to supplement the final rule through horizontal reviews of the internal stress-testing methods, liquidity risk management, and liquidity adequacy of the largest, most complex bank holding companies.

Many commenters were generally supportive of the proposed liquidity rules and expressed the view that the liquidity requirements were an appropriate step for improving liquidity risk monitoring and management. One commenter noted that the tools in the proposed rule (particularly the cash-flow projections, liquidity stress testing, liquidity buffer, and contingency funding planning) are consistent with liquidity management practices as they have evolved since the financial crisis. Other commenters, however, expressed concern that the proposed rules were too limiting and requested that the risk management and stress testing requirements include additional flexibility for smaller bank holding companies. These commenters argued that formulaic quantitative and specific risk management requirements should apply only to bank holding companies with the greatest systemic footprints, and, further, that criteria such as an institution's business model would be a better gauge of systemic importance than asset size.

The Board observes that, in general, the proposed requirements build on existing guidance that sets forth supervisory expectations for liquidity risk management at institutions of all sizes. Additionally, the proposed requirements were designed to provide bank holding companies with

[44] *See* Basel Committee, ''Principles for enhancing corporate governance,'' (October 2010), *available at: http://www.bis.org/publ/bcbs176.pdf* (''While the chief risk officer may report to the chief executive officer or other senior management, the chief risk officer should also report and have direct access to the board and its risk committee without impediment.''). *See also* FSB, ''Thematic Review on Risk Governance,'' (February 2013), *available at: http://www.financialstabilityboard.org/publications/r_130212.pdf* (The chief risk officer should have ''a direct reporting line to the chief executive officer'' and ''a direct reporting line to the board and/or risk committee.'').

[45] Guidance on Sound Incentive Compensation Policies, 75 FR 36395 (June 25, 2010).

[46] 12 U.S.C. 5365(b)(1)(A)(ii).

[47] Principles for Sound Liquidity Risk Management and Supervision (September 2008), *available at: http://www.bis.org/publ/bcbs144.htm. See also* Supervision and Regulation Letter SR 10–6, Interagency Policy Statement on Funding and Liquidity Risk Management (March 17, 2010), *available at: http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006.pdf*; 75 FR 13656 (March 22, 2010). Bank holding companies that are not subject to the final rule are also expected to have adequate liquidity resources and engage in sound liquidity risk management consistent with the Interagency Liquidity Risk Policy Statement.

significant flexibility as to the structure of the liquidity risk management process, so that a bank holding company can manage its liquidity risk consistent with its overall risk profile and business model. However, the prescriptive elements of the proposed requirements represent the minimum standards that the Board believes should be incorporated into the liquidity risk-management practices of all bank holding companies with total consolidated assets of $50 billion or more.

The Board therefore is adopting the proposed requirements with some modifications, as described below. In many cases, the final rule directs a company to implement the standards taking into account its capital structure, risk profile, complexity, activities, and size, reflecting the Board's view that the standards are sufficiently flexible to be used by bank holding companies with varying sizes, business models, and activities.

Several commenters opined that they preferred the proposal's internal-models-based approach to stress testing to the standardized approach required by the international liquidity standards published by the Basel Committee in December 2010 and revised in January 2013, including the liquidity coverage ratio (Basel III LCR).[48] While the Board believes that a regulatory framework for overall liquidity risk management—including internal stress testing—is important as part of enhanced liquidity standards, the Board also believes that a standardized, minimum liquidity risk requirement is an important component of a comprehensive liquidity risk framework for large, complex institutions. Accordingly, the Board participated in the international agreement on liquidity standards and sought comment on a proposed liquidity coverage ratio based on the Basel III LCR (proposed U.S. LCR) in October 2013.[49] Consistent with the Basel III LCR, the proposed U.S. LCR would require internationally active banking organizations and nonbank financial companies supervised by the Board to hold an amount of high-quality liquid assets sufficient to meet expected net cash outflows under a supervisory stress scenario over a 30-day time horizon.[50] The proposed U.S. LCR would also apply a less stringent, modified liquidity coverage ratio to bank holding companies with total consolidated assets between $50 billion and $250 billion that do not meet the thresholds for an internationally active banking organization.[51]

The proposed U.S. LCR and the enhanced liquidity requirements included in this rule were designed to complement one another. Whereas the final rule's internal liquidity stress-test requirements provide a view of an individual firm under multiple scenarios, and include assumptions tailored to the specific products and risk profile of the company, the standardized measure of liquidity adequacy that would be provided by the proposed U.S. LCR would facilitate a transparent assessment of firms' liquidity positions under a standard stress scenario and facilitate comparison across firms. Both requirements would enhance the liquidity position of bank holding companies while requiring robust liquidity risk management practices.

2. Framework for Managing Liquidity Risk

a. Board of Directors

The domestic proposal would have required the board of directors of a bank holding company with total consolidated assets of $50 billion or more to oversee the company's liquidity risk management processes, and to review and approve the liquidity risk management strategies, policies, and procedures established by senior management. As part of these responsibilities, the board of directors would have been required to establish the bank holding company's liquidity risk tolerance at least annually. The proposal defined liquidity risk tolerance as the acceptable level of liquidity risk that a company may assume in connection with its operating strategies. The preamble to the proposed rule explained that the liquidity risk tolerance should reflect the board of directors' assessment of tradeoffs between the costs and benefits of liquidity, and should be articulated in a way that all levels of management can clearly understand and properly apply the articulated approach to all aspects of liquidity risk management throughout the organization.

The proposed rule would have required the board of directors to review information provided by senior management at least semi-annually to determine whether the company is managed in accordance with the established liquidity risk tolerance. The proposal also would have required the board of directors to review and approve the bank holding company's contingency funding plan[52] at least annually and whenever the company materially revises the plan.

Some commenters asserted that the governance requirements for the board of directors in the proposal should be more flexible. Commenters also criticized the proposed rule for assigning what they described as operational responsibilities to the board of directors and the risk committee, and argued that those responsibilities were more appropriate for senior management. While some commenters believed that the board of directors should have responsibility for approving liquidity risk policies, others stated that the proposed responsibilities would interfere with directors' oversight duties, perhaps shifting their focus from areas presenting more significant risks than liquidity risk. Similarly, other commenters requested flexibility to reflect their varying business models, or to allow companies to respond to changing business conditions. One commenter suggested that the Board make directors and chief executive officers personally responsible for liquidity risk management and require them to attest to the soundness of liquidity risk estimates.

The Board believes that the board of directors should have responsibility for oversight of liquidity risk management because the directors have ultimate responsibility for the direction of the entire company, but that certain risk management responsibilities are appropriately assigned to senior management. Accordingly, in response to comments, the Board has adjusted the requirements of the final rule.

The final rule requires the board of directors to approve the company's

[48] Basel III: International framework for liquidity risk measurement, standards and monitoring (December 2010), *available at: http://www.bis.org/publ/bcbs188.pdf*; Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools (January 2013), *available at: http://www.bis.org/publ/bcbs238.htm*.

[49] *See* Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring, 78 FR 71818 (November 29, 2013).

[50] *Id.* The proposed U.S. LCR would apply to all bank holding companies, certain savings and loan holding companies, and depository institutions with more than $250 billion in total assets or more than $10 billion in on-balance sheet foreign exposure, and to their consolidated subsidiaries that are depository institutions with $10 billion or more in total consolidated assets. The proposed U.S. LCR would also apply to nonbank financial companies supervised by the Board that do not have significant insurance operations and to their consolidated subsidiaries that are depository institutions with $10 billion or more in total consolidated assets.

[51] *Id.* For instance, the modified liquidity coverage ratio standard is based on a 21-calendar day stress scenario rather than a 30-calendar day stress scenario.

[52] The contingency funding plan is the company's compilation of policies, procedures, and action plans for managing liquidity stress events, as described more fully in section III.C.5 of this preamble.

liquidity risk tolerance at least annually, receive, and review information from senior management at least semi-annually to determine whether the bank holding company is operating in accordance with its established liquidity risk tolerance, and to approve and periodically review the liquidity risk management strategies, policies, and procedures established by senior management. Unlike the proposal, however, it assigns responsibility for reviewing and approving the contingency funding plan to the risk committee, as further discussed below. In addition, the text of the final rule locates the obligations of the board of directors in a separate paragraph from the responsibilities of the risk committee to clarify these responsibilities.

The final rule does not assign personal responsibility to directors and chief executive officers for liquidity risk management or require them to attest to the soundness of liquidity risk estimates. The Board typically does not apply personal liability to directors and chief executive officers and believes that assigning responsibility to the board of directors is sufficient for achieving the Board's safety and soundness goals.

b. Risk Committee

The proposal would have required the risk committee or a designated subcommittee of the risk committee to review and approve the liquidity costs, benefits, and risk of each significant new business line and each significant new product before the company implements the business line or offers the product. It would have required the risk committee to consider whether the liquidity risk of the new strategy or product under both current and stressed conditions would be within the established liquidity risk tolerance. In addition, the risk committee or designated subcommittee would have been required at least annually to review and approve significant business lines and products to determine whether the liquidity risk of each aligns with the company's liquidity risk tolerance. The proposal would also have required the risk committee or a designated subcommittee thereof to review the cash flow projections, approve liquidity risk limits, and review and approve elements relating to liquidity stress tests at least quarterly, periodically to review the independent validation of the liquidity stress tests produced under the rule,[53] and to establish procedures governing the content of senior management reports on the liquidity risk profile of the company and other information provided regarding compliance with the rule.

Commenters asserted that the requirements for the risk committee inappropriately dictated the frequency of reviews of various liquidity reports and limits and asserted that the requirements inappropriately included operational responsibilities. As an alternative, one commenter stated that the risk committee should be required only to review material stress-testing practices, methodologies, and assumptions, with discretion as to the level of review. Another commenter requested that the Board clarify ''significant'' in reference to the risk committee's obligations regarding significant business lines and products.

In response to these comments, the Board has modified the requirement to require senior management, rather than the risk committee, to review and approve new products and business lines and evaluate liquidity costs, benefits, and risks related to each new business line and product that could have a significant effect on the company's liquidity risk profile and to annually review the liquidity risk of each significant business line and product.[54] Similarly, in response to the concern that the proposed quarterly reviews would be operational duties inappropriate for the risk committee, the final rule requires senior management, and not the risk committee, to perform these reviews.

In addition, as described above, the final rule requires the risk committee or a designated subcommittee thereof,[55] rather than the board of directors, to review and approve the contingency funding plan at least annually and whenever the company materially revises the plan. The Board believes that this change is appropriate given that the risk committee is responsible for understanding the liquidity risks associated with different business lines and products and is composed of a subset of directors with the appropriate level of risk-management expertise to conduct an in-depth review of the contingency funding plan. While the directors of the board should understand and periodically review the contingency funding plan, the risk committee and senior management have close proximity to the operational-level details included in the contingency funding plan and can evaluate and modify the contingency funding plan as needed.

c. Senior Management

The proposed rule would have established responsibilities for the senior management of a bank holding company with total consolidated assets of $50 billion or more, including requirements to establish and implement liquidity risk management strategies, policies, and procedures and to oversee the development and implementation of liquidity risk measurement, monitoring and reporting systems, cash-flow projections, liquidity stress testing and associated buffers, specific limits, and the contingency funding plan. The proposed rule also would have required senior management to report regularly to the risk committee, or designated subcommittee thereof, on the liquidity risk profile of the company and provide other information, as necessary, to the board of directors or risk committee. The Board noted in the preamble to the proposed rule that it would expect management to report as frequently as conditions warrant, but no less frequently than quarterly. The Board is finalizing these requirements substantially as proposed.

As explained above, the proposed rule required the risk committee to review and approve the liquidity risk management strategies, policies, and procedures established by senior management, and the Board has reassigned certain responsibilities from the risk committee to senior management in response to comments. Specifically, the final rule requires senior management to review and approve new products and business lines and evaluate liquidity costs, benefits, and risks related to each new business line and product that could have a significant effect on the company's liquidity risk profile and to annually review the liquidity risk of each significant business line and product. It requires senior management to establish the liquidity risk limits specified in the final rule (as discussed in section III.C.6 of this preamble), and to review the company's compliance with those limits at least quarterly. In addition, it requires senior management to review the cash flow projections required by the final rule at least quarterly (as discussed in section III.C.4 of this preamble) and to review and approve certain aspects of the liquidity

[53] The independent validation and liquidity stress testing requirements are described more fully in section III.C.3 and 8 of this preamble.

[54] The Board is clarifying that a ''significant'' business line or product is one that could have a significant effect on the company's liquidity risk profile.

[55] For purposes of the rule's liquidity risk management requirements, a designated subcommittee of the risk committee must be composed of members of the board of directors.

stress testing framework (as discussed in sections III.C.8 and 9 of this preamble) at specified intervals. Senior management must conduct more frequent reviews than those required in the final rule if the financial condition of the company or market conditions indicate that the liquidity risk tolerance, business strategies and products, or contingency funding plan of the company should be reviewed or modified.

In the Board's view, this change is appropriate given that senior management has the appropriate level of seniority and expertise to conduct these reviews. Senior management maintains proximity to the operational-level details that comprise such reports and limit structures. In addition, senior management is required to update the risk committee or the board of directors on a regular basis, and is thereby in a position to raise issues to the risk committee or board of director's attention, as appropriate. The Board notes that a company may assign the responsibilities assigned to senior management described above to its chief risk officer, as this officer would be considered a member of the senior management of a company.

3. Independent Review

Under the proposed rule, a bank holding company with total consolidated assets of $50 billion or more would have been required to establish and maintain a review function to evaluate its liquidity risk management that was independent of management functions that execute funding. The Board is finalizing the substance of these requirements as proposed. The Board believes that an independent review function is a critical element of a sound liquidity risk management governance program. As such, the independent review function is required to review and evaluate the adequacy and effectiveness of the bank holding company's liquidity risk management processes regularly, but no less frequently than annually. It is also required to assess whether the company's liquidity risk management function complies with applicable laws, regulations, supervisory guidance, and sound business practices. To the extent permitted by applicable law, the independent review function must also report material liquidity risk management issues in writing to the board of directors or the risk committee for corrective action.

An appropriate internal review conducted by the independent review function should address all relevant elements of the liquidity risk management processes, including adherence to the established policies and procedures, and the adequacy of liquidity risk identification, measurement, and reporting processes. Personnel conducting these reviews should seek to understand, test, and evaluate the liquidity risk management processes, document their review, and recommend solutions for any identified weaknesses.

One commenter requested that the Board clarify whether the independent review function is required to be independent of the liquidity risk management function. The Board is clarifying that the independent review function is not required to be independent of the liquidity risk management function. However, in the final rule, consistent with the proposal, the independent review function must be independent of management functions that execute funding (e.g., the treasury function).

As discussed in section III.C.8 of this preamble, the Board has revised the proposed requirement that liquidity stress test processes and assumptions be independently validated to require that the liquidity stress test processes and assumptions be subject to independent review, subject to review by the chief risk officer. This is reflected in the final rule text.

4. Cash-Flow Projections

The proposed rule would have required a bank holding company with total consolidated assets of $50 billion or more to produce comprehensive projections that project short-term and long-term cash flows from assets, liabilities, and off-balance sheet exposures. The required projections would have included cash flows arising from contractual maturities and intercompany transactions, as well as cash flows from new business, funding renewals, customer options, and other potential events that may have an impact on liquidity over appropriate time periods. The proposal would have required firms to identify and quantify discrete and cumulative cash-flow mismatches over these time periods. The proposed rule also would have required firms to produce analyses that incorporated reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures in projected cash flows and reflected the company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. The proposal would have also required the company adequately to document its cash flow methodology and assumptions and conduct short-term cash-flow projections daily and long-term cash flows on a monthly basis.

Commenters suggested that instead of requiring a specific type of cash-flow projection, the final rule should allow each company to formulate liquidity and funding projections in a manner most appropriate for its business model. As an example, commenters asserted that the prescribed method did not accurately measure the liquidity risk for bank holding companies with large broker-dealer subsidiaries. Commenters asserted that it was unnecessary to produce frequent cash-flow projections when companies have ample liquidity, and therefore the requirement should be graduated to reflect different market or firm-specific circumstances. Other commenters generally criticized the proposed time horizons as inflexible and unnecessary. One commenter asked the Board to confirm that it does not expect firms to develop cash-flow projections over horizons longer than one year.

The Board believes that standardized cash-flow projections performed over a range of time horizons, updated daily for short-term projections and monthly for long-term projections, are appropriate for all bank holding companies with total consolidated assets of $50 billion or more to capture shifts in liquidity vulnerabilities over time. The Board believes that the proposal provided sufficient flexibility for bank holding companies subject to the rule to adapt the cash-flow projection requirements to their particular circumstances, such as if they have significant broker-dealer activities. The final rule clarifies that cash-flow projections must provide sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the bank holding company, including, where appropriate, analyses by business line, currency, or legal entity, and must be performed, at a minimum, over short and long-term time horizons. Accordingly, the Board is finalizing the rule substantially as proposed.

While the final rule implements a minimum standard for frequency of projections, more frequent cash-flow reports may be appropriate for companies with more complex risk profiles or for all companies during times of stress. Similarly, while the final rule does not require cash-flow projections over time horizons longer than one year, it may be appropriate for companies to produce cash-flow projections for longer time periods, for instance to account for long-term debt maturities, if circumstances warrant.

5. Contingency Funding Plan

As part of a robust regulatory framework to promote comprehensive liquidity risk management, the proposal would have required a bank holding company to establish and maintain a contingency funding plan. As described in the proposal, a contingency funding plan is a compilation of policies, procedures, and action plans for managing liquidity stress events that, together, provide a plan for responding to a liquidity crisis. Under the proposed rule, the contingency funding plan would have been required to be commensurate with the company's capital structure, risk profile, complexity, activities, size and established liquidity risk tolerance. The proposal also would have required the contingency funding plan to be updated annually or more often if necessary. Under the proposed rule, the contingency funding plan would have included two components: A quantitative assessment and an event-management process. The proposed rule also would have required the contingency funding plan to include procedures for monitoring risk.

In the quantitative assessment, a bank holding company would have been required to identify stress events that have a significant impact on the company's liquidity, assess the level and nature of the impact on the bank holding company's liquidity of such stress events, and assess available funding sources and needs during identified liquidity stress events. Liquidity stress events could include a deterioration in asset quality, a widening of credit default swap spreads, or other events that call into question the company's ability to meet its obligations. The required analysis would have included all material on- and off-balance sheet cash flows and their related effects and would have required a firm to incorporate information generated by liquidity stress testing to determine liquidity needs and funding sources. The proposed rule would also have required a bank holding company to identify alternative funding sources that may be accessed during identified liquidity stress events. The preamble to the proposed rule observed that since some of these alternative funding sources will rarely be used in the normal course of business, a bank holding company should conduct advance planning and periodic testing (as further discussed below) to make sure that the funding sources are available when needed, and put into place administrative procedures and agreements. The preamble to the proposed rule also noted that discount window credit may be incorporated into contingency funding plans as a potential source of funds in a manner consistent with the terms provided by the Federal Reserve Banks, and that contingency funding plans that incorporate borrowing from the discount window should specify the actions that the company will take to replace discount window borrowing with more permanent funding, including the proposed time frame for these actions.

The proposal would have required the contingency funding plan to include an event-management process that set forth procedures for managing liquidity during identified liquidity stress events. The proposed rule would have also required the contingency funding plan to include procedures for monitoring emerging liquidity stress events and for identifying early warning indicators of emerging liquidity stress events that are tailored to a bank holding company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. The preamble to the proposed rule noted that such early warning indicators may include, but are not limited to, negative publicity concerning an asset class owned by the bank holding company, potential deterioration in the bank holding company's financial condition, widening debt or credit default swap spreads, and increased concerns over the funding of off-balance-sheet items.

Finally, the proposed rule would have required a bank holding company periodically to test the components of the contingency funding plan to assess its reliability during liquidity stress events, including trial runs of the operational elements of the contingency funding plan to ensure that they work as intended during a liquidity stress event. The preamble to the proposed rule noted that the tests should include operational simulations to test communications, coordination, and decision-making involving relevant managers, including managers at relevant legal entities within the corporate structure, as well as methods the bank holding company intends to use to access alternate funding.

Some commenters supported the domestic proposal's approach to contingency funding planning, finding it sufficiently flexible to accommodate firms' liquidity risk management practices. Other commenters, however, criticized the proposed requirement that contingency funding plans incorporate the quantitative results of liquidity stress tests and be updated annually. Instead, these commenters asserted that the Board should allow management to have a contingency funding plan that outlines qualitative strategies to address a variety of scenarios that may be generically implemented in the face of an actual crisis, rather than require management mechanically to update every aspect of the contingency funding plan at set intervals. Commenters also expressed concern that requiring an institution to book transactions as a means of testing the plan could be detrimental to the financial institution overall. Instead, they asserted that bank holding companies should be able to adequately test components of the contingency funding plan through ''war room'' simulations.

The Board is clarifying that it does not expect every aspect of the contingency funding plan to be modified at set intervals. For example, many of the qualitative items in a contingency funding plan, such as the event-management process, reporting requirements, contact lists, scenario descriptions, and general stress testing assumptions will not change at every review period. At the same time, the Board continues to believe that an appropriate time interval for reviewing and updating (as necessary) key aspects of the contingency funding plan is important to the maintenance of an effective and relevant contingency funding plan. Because a firm's balance sheet changes over time, the analysis must be refreshed at regular intervals to ensure its ongoing relevance. Additionally, while the qualitative aspects of a contingency funding plan are important, quantitative analysis is necessary to achieve a higher level of effectiveness in identifying the size, scope, and timing of potential liquidity needs and liquidity resources that are available to meet those needs. The contingency funding plan must be updated whenever changes to market and idiosyncratic conditions would have a material impact on the plan.

Regarding testing, the Board is clarifying in connection with the final rule that, in some cases, effective implementation of the contingency funding plan for a bank holding company should include, in part, periodic liquidation of assets, including portions of the bank holding company's liquidity buffer, which can be through outright sale or repo of buffer assets. In the Board's experience, many aspects of the contingency plan can actually be tested with trades executed, and with advance notification to counterparties that a simulation is taking place, without sending a distress signal to the marketplace, and such exercises are critical in demonstrating treasury

control over assets and an ability to convert the assets into cash to be used to offset outflows. However, testing the contingency funding plan does not necessarily require the booking of transactions for each contingency funding option. Rather, the focus of the contingency funding plan testing requirements is on the operational aspects of such sources, which can often be tested via ''table top'' or ''war room'' type exercises.

One commenter requested that the Board clarify whether a bank holding company may include advances from Federal Home Loan Banks (FHLBs) in its contingency funding plan. The Board is clarifying that lines of credit, such as FHLB advances, may be included as sources of funds in contingency funding plans; however, firms should consider the characteristics of such funding and how the counterparties may behave in times of stress. For example, counterparties may require more collateral with greater haircuts in a time of stress, and accordingly this possibility should also be considered when including these potential sources of liquidity in a company's contingency funding plan.

Discount window credit may be incorporated into contingency funding plans as a potential source of funds for a bank holding company in a manner consistent with terms provided by Federal Reserve Banks. For example, primary credit is currently available on a collateralized basis for financially sound institutions as a backup source of funds for short-term funding needs. Contingency funding plans that incorporate borrowing from the discount window should specify the actions that would be taken to replace discount window borrowing with more permanent funding, and include the proposed time frame for these actions.

The Board is also modifying the event-management process requirement to provide that a bank holding company must identify the circumstances in which it will implement its contingency funding plan. These circumstances must include a failure to meet any minimum liquidity requirement established by the Board, which may include a final version of the proposed U.S. LCR, if adopted by the Board. Accordingly, the Board believes it is important that a company include a failure to meet any minimum requirement the Board may impose in the future in its considerations of when to implement its contingency funding plan. With the exception of these modifications, the Board is adopting the substance of the proposed contingency funding planning requirements without change.

6. Liquidity Risk Limits

To enhance management of liquidity risk, the proposed rule would have required a bank holding company with total consolidated assets of $50 billion or more to establish and maintain limits on potential sources of liquidity risk, including three specified sources of liquidity risk: Concentrations of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and other liquidity risk identifiers; the amount of liabilities that mature within various time horizons; and off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.[56]

Several commenters suggested that the specific limits in the proposal were too constraining, and requested that the Board incorporate increased flexibility into the limits. The Board believes that the specific types of limits enumerated are critical components of the liquidity risk management framework, as they address concentration, time horizons, and off-balance sheet exposures, each of which is an element of liquidity risk management that may prove critical during a crisis. The Board notes, further, that the final rule requires each bank holding company to establish limits appropriate to its size, complexity, capital structure, risk profile, and activities, among other things. The final rule therefore requires a bank holding company to address these types of liquidity risk, but does not establish a particular limit for any given company. The Board believes, therefore, that the final rule provides sufficient flexibility for each bank holding company to establish appropriately individualized limits, and is finalizing this aspect of the proposal without change.

7. Collateral, Legal Entity, and Intraday Liquidity Risk Monitoring

The proposed rule would have required a bank holding company with total consolidated assets of $50 billion or more to monitor liquidity risk related to collateral positions, liquidity risks across the enterprise, and intraday liquidity positions. Under the proposal, a company would have been required to establish and maintain procedures for monitoring assets it has pledged as collateral for an obligation or position, and assets that are available to be pledged. To promote effective monitoring across a banking organization, the proposed rule would have required a company to establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines. As stated in the proposal, the company should maintain sufficient liquidity in light of possible obstacles to cash movements between specific legal entities or between separately regulated entities are recognized in normal times and during liquidity stress events.

The proposed rule would have required a bank holding company to establish and maintain procedures for monitoring its intraday liquidity risk exposure. To ensure that liquidity risk is appropriately monitored, the Board explained in the preamble to the proposed rule that it expects a bank holding company to provide for integrated oversight of intraday exposures within the operational risk and liquidity risk functions. The Board also observed that it expects the procedures for monitoring and managing intraday liquidity positions to reflect, in stringency and complexity, the scope of operations of the company.

Commenters expressed concern about the monitoring standards, stating that they were inflexible and burdensome. For example, commenters asserted that each company should be able to decide which intraday metrics should be tracked. In addition, some commenters asserted that smaller institutions might struggle to meet the monitoring requirements related to the intraday liquidity position. However, some commenters opined that larger institutions, such as institutions involved with payments processing, should be held to a higher standard.

Intraday liquidity monitoring is an important component of the liquidity risk management process for a bank holding company engaged in significant payment, settlement, and clearing activities. Given the interdependencies that exist among payment systems, a bank holding company with more than $50 billion in total consolidated assets that is unable to meet critical payments has the potential to lead to systemic disruptions that can prevent the smooth functioning of payments systems and money markets. Furthermore, the Board believes that the monitoring requirements are appropriate for all bank holding companies with total consolidated assets of $50 billion or more. To the extent that such a bank holding company has higher intraday risk, the final rule would require more monitoring. As a result, the Board is

[56] Such exposures may be contractual or non-contractual exposures, and include unfunded loan commitments, lines of credit supporting asset sales or securitizations, collateral requirements for derivative transactions, and a letter of credit supporting a variable demand note.

finalizing the substance of the monitoring standards as proposed.

8. Liquidity Stress Testing

a. Overview

Under the proposal, bank holding companies with total consolidated assets of $50 billion or more would have been required to perform regular stress tests on cash-flow projections by identifying liquidity stress scenarios based on the company's full set of activities, exposures and risks, both on- and off-balance sheet, and by taking into account non-contractual sources of risks, such as reputational risks. The proposed rule would have then required an assessment of the effects of those scenarios on the company's cash flow and liquidity. Under the proposed rule, the bank holding company would have used the results of the stress tests to determine the size of its liquidity buffer, and would have incorporated information generated by stress testing into the quantitative component of the contingency funding plan. Although many commenters were generally supportive of the goals of the liquidity stress testing in the domestic proposal, some expressed specific concerns about the proposed requirements, as discussed below.

b. Scope and Frequency

The proposed rule would have required a bank holding company to conduct liquidity stress tests at least monthly, as well as to maintain the capacity for ''ad hoc'' stress tests to address unexpected circumstances. Several commenters argued that the proposed frequency of liquidity stress testing was excessive and suggested that stress testing should be conducted semiannually and supplemented by monitoring of the liquidity position of the firm through management of established metrics. One commenter stated that stress testing should be required less frequently for smaller organizations than for larger ones.

The Board believes that frequent liquidity stress testing is an essential part of a robust liquidity stress test regime. Regular stress testing is particularly important for effective evaluation of liquidity resources and risk management because of the dynamic nature of a firm's liquid assets, inflows, and outflows. Frequent evaluations of the firm's position against a scenario where regular sources of liquidity could rapidly vanish or be curtailed are essential to understanding the firm's readiness for an unanticipated liquidity stress event. The Board therefore believes that the requirement for monthly stress testing is appropriate and is finalizing this requirement as proposed. The Board observes that this requirement is consistent with current supervisory expectations that bank holding companies conduct liquidity stress tests regularly.[57] In addition, the Board believes that most bank holding companies subject to the rule already conduct liquidity stress tests at the frequency required by the rule. The Board further observes that the final rule, like the proposal, provides flexibility within the stress-testing framework for stress testing to be tailored based on a firm's size, complexity, and operations. This tailoring may require analyses by business line or legal entity, as well as stress scenarios that use more time horizons than the minimum required by the final rule.

c. Liquidity Stress Testing Scenario Requirements

The proposal would have required a bank holding company with total consolidated assets of $50 billion or more to incorporate in its stress tests a minimum of three stress scenarios that could significantly impact the company's liquidity. These would have included scenarios to account for adverse market conditions, an idiosyncratic stress event, and combined market and idiosyncratic stresses. The stress scenarios would have also been required to address the potential for market disruptions and the actions of other market participants experiencing simultaneous stress. The proposal would also have required a bank holding company's stress tests to include a minimum of four periods over which the relevant stressed projections extend: Overnight, 30-day, 90-day, and one-year time horizons, and additional time horizons as appropriate. Furthermore, as explained in the proposal, stress testing should be sufficiently dynamic that it would be able to incorporate a variety of changes in the bank holding company's internal position and external circumstances, including risks that may arise over time from idiosyncratic events, macroeconomic and financial market developments, or a combination thereof.[58] Therefore, additional scenarios, based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, should be used as needed to ensure that all of the significant aspects of liquidity risks to the company have been modeled.

The proposed rule would have required a bank holding company's liquidity stress testing comprehensively to address its activities, exposures, and risks, including off-balance sheet exposures. The preamble to the proposal indicated that stress testing should address non-contractual sources of risk, such as reputational risk, and risk arising from the covered company's use of sponsored vehicles that issue debt instruments periodically to the markets, such as asset-backed commercial paper and similar conduits.

Many commenters supported these proposed liquidity stress testing requirements because they were flexible and permitted bank holding companies to develop their own liability run-off factors and other assumptions. One commenter objected to the Board's statement in the proposal that a bank holding company should incorporate liquidity risks arising from sponsored vehicles in its liquidity stress tests, asserting that sponsored vehicles have a broad diversity of risk. The Board has adopted the substance of the proposed liquidity stress testing requirements as proposed, and has adjusted certain aspects of the regulatory language to clarify the minimum requirements set forth in the rule. With respect to sponsored vehicles, the Board reiterates that bank holding companies should include sponsored vehicles and similar conduits in their stress tests, as these vehicles received unanticipated support from some banking institutions in the recent financial crisis, and similar liquidity risks may arise in the future.

Under the proposal, a bank holding company would have been required to discount the fair value of an asset that is used as a cash-flow source to offset projected funding needs in order to reflect any credit risk and market volatility of the asset, and to have diversified sources of funding throughout each stress test planning horizon. The final rule maintains these requirements, but in light of comments received on the proposed liquidity buffer discussed below, excludes cash and securities issued by the United States, a U.S. government agency,[59] or a U.S. government-sponsored enterprise,[60] from the diversification

[57] *See* the Interagency Liquidity Risk Policy Statement, *supra* note 47.

[58] 77 FR 594, 607.

[59] A U.S. government agency is defined in the proposed rule as an agency or instrumentality of the United States whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States.

[60] A U.S. government-sponsored enterprise is defined in the proposed rule as an entity originally established or chartered by the U.S. government to

requirement. However, a bank holding company should ensure that concentrations in all assets, including those excluded from the rule's diversification requirement, are appropriate in light of the risk profile of the bank holding company and market conditions.

Similarly, bank holding companies are expected to make conservative assumptions about the types of cash-flow sources that would be available over a 30-day stress period. The final rule clarifies that a line of credit may qualify as a cash flow source for purposes of a stress test with a planning horizon that exceeds 30 days, but not for purposes of a stress test with a planning horizon of 30 days or less. In addition, net cash outflows may include some cash inflows, but these should be generally limited to contractual maturities within the 30 days.

In addition to the stress-testing requirements described above, the proposed rule would have established requirements for oversight and control functions, including an independent validation function; and requirements for management information systems sufficient to enable the bank holding company effectively and reliably to collect, sort, and aggregate data and other information. Several commenters requested clarification of what is meant by the requirement that the stress-testing process and its assumptions be validated, including clarification that the validation function can be an internal function. In response to these comments and in light of the potential operational burden of validation, the Board has revised the requirement in the final rule to require instead that a bank holding company appropriately incorporate conservative assumptions in developing its stress test scenarios and the other elements of the stress test process and that these assumptions take into consideration the company's capital structure, risk profile, complexity, activities, size, business lines, legal entity or jurisdiction, and other relevant factors, and the assumptions must be approved by the chief risk officer and subject to independent review as described in section III.C.3 of this preamble.

In addition to the changes described above, the final rule includes technical, non-substantive revisions that clarify the liquidity stress testing requirements.

9. Liquidity Buffer

The proposed rule would have required a bank holding company with total consolidated assets of $50 billion or more to hold highly liquid assets (known as a buffer) sufficient to meet liquidity needs as identified by the internal stress test. The proposal would have required the liquidity buffer to be composed of unencumbered highly liquid assets sufficient to meet projected net cash outflows for 30 days over the range of liquidity stress scenarios used in the internal stress testing.

A commenter argued that requiring companies to comply with a 30-day buffer requirement may induce companies to create stress scenarios without the appropriate level of severity. In its supervisory reviews, the Board will review the companies' scenarios to ensure that they are sufficiently severe to expose key funding vulnerabilities, and the Board intends to reinforce these expectations. The final rule provides that the liquidity buffer must be sufficient to meet the projected net stressed cash flow need over the 30-day planning horizon of a liquidity stress test under each of an adverse market condition scenario, an idiosyncratic stress event scenario, and a combined market and idiosyncratic stresses scenario.

a. Criteria for Highly Liquid Assets

The proposed definition of highly liquid assets included cash and securities issued or guaranteed by the U.S. government, a U.S. government agency, or a U.S. government-sponsored enterprise, because these securities have remained liquid even during prolonged periods of severe liquidity stress. In addition, recognizing that other assets could also be highly liquid, the proposed definition included a provision that would allow a bank holding company to include other types of assets in the buffer if the bank holding company demonstrated to the satisfaction of the Board that those assets: (i) Have low credit and market risk; (ii) are traded in an active secondary two-way market that has observable market prices, committed market makers, a large number of market participants, and a high trading volume; and (iii) are types of assets that investors historically have purchased in periods of financial market distress during which liquidity has been impaired.

Several commenters asserted that the criteria for highly liquid assets were too limited, and requested further guidance on the full range of assets that might qualify. These commenters also requested that correlation statistics, performance comparisons to benchmark securities or indices, and portfolio diversification benefits be considered among eligibility criteria. The commenters asked the Board to revise the definition of highly liquid assets specifically to enumerate a broader scope of assets, such as foreign sovereign obligations and obligations issued by multi-lateral development and central banks; claims against central banks of acceptable sovereign issuers; gold; FHLB borrowing capacity; committed lines of credit; inventory positions (including equities) maintained by the broker-dealer operations of a bank holding company, if any; municipal securities; shares of money market mutual funds holding U.S. government securities; and collateral accepted by the discount window. One commenter suggested that the Board establish a mechanism whereby the Board would regularly notify firms of other approved highly liquid asset categories. By contrast, one commenter asserted that the proposal was too permissive, and that bank holding companies should only be allowed to include cash and short-term U.S. government securities in their buffer.

Liquidity characteristics of assets may vary under different types of stress scenarios. The proposed definition of highly liquid asset provided companies discretion to determine whether an asset would be liquid under a particular scenario. The Board also believes that restricting the assets available for liquidity coverage to cash and securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise is unnecessarily limited, and could have negative effects on market liquidity generally. As a result, consistent with the proposal, the final rule defines highly liquid assets to include cash, securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise, and any other asset that a bank holding company demonstrates to the satisfaction of the Board meets defined characteristics of liquidity.

Assets that are high-quality liquid assets under the proposed U.S. LCR (which include equities included in the S&P 500 index or comparable indices and investment grade corporate bonds) would be liquid under most scenarios; however, the bank holding company would be required to make the demonstration to the Board required by the final rule, meet the diversification requirement discussed below, and ensure that the inclusion of these assets

serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the United States.

in the buffer would be appropriate taking into consideration the liquidity risk profile of the company. A bank holding company is required to assign appropriate haircuts to all highly liquid assets, including assets that qualify as high-quality liquid assets under the proposed U.S. LCR: those haircuts may be different from the haircuts assigned in the proposed U.S. LCR.

Some commenters expressed concern that the specified criteria for highly liquid assets would result in institutions holding a narrow band of asset classes, including concentrations in sovereign debt, and opined that limiting the criteria could lead to increased financial stability risks. As explained above, the Board believes the specified criteria for the buffer are not overly constraining and allow for a diverse set of assets to be included in the liquidity buffer. The Board believes that, in some cases, sovereign debt issued by foreign countries will meet the criteria for highly liquid assets, and the criteria should not result in undue concentrations in those asset classes. In addition, the diversification requirement (as discussed in more detail below) is included in the final rule specifically to address the problem of inappropriate asset concentration in the buffer generally. Additionally, supervisors will scrutinize any concentrations in assets held to meet the buffer requirement as they evaluate overall whether the composition of a company's buffer is appropriately tailored to its specific liquidity risks.

Several commenters requested clarification on how to account for reverse repo transactions, particularly those secured by highly liquid assets, in the buffer and how the tenor of the agreement would play a role in the availability of the asset in a company's highly liquid asset calculation under the proposed rule. The Board clarifies that if firms are able to rehypothecate collateral they hold that has been pledged to them to secure a loan (but have not done so), they may count that collateral as a highly liquid asset with appropriate haircuts. Appropriate haircuts and measurements of inflows and outflows would depend on the specific terms of the reverse repo transaction. Inflows related to secured loans can be considered in the measurement of net cash need, but the firm should also consider the stress scenario and reputational factors to determine if they would continue to renew and make new loans.

b. Requirement That Assets Be Unencumbered

In order to ensure that liquid assets held by a bank holding company to meet liquidity needs under stress would be freely available for sale or pledge at all times in order to generate funds for the company, the proposal required that highly liquid assets in the liquidity buffer be unencumbered. The proposed definition of unencumbered, with respect to an asset, was that (i) the asset is not pledged, does not secure, collateralize, or provide credit enhancement to any transaction, and is not subject to any lien; (ii) the asset is free of legal, contractual, or other restrictions on the ability of the company to sell or transfer; and (iii) the asset is not designated as a hedge on a trading position.

A number of commenters criticized the definition of ''unencumbered'' in the proposed rule. Some commenters expressed concern that the proposed definition excluded assets that are technically encumbered but, as they can be freed from encumbrance at any point, are typically treated as unencumbered by bank holding companies for liquidity management purposes. As examples of such ''technically'' encumbered assets, the commenters mentioned: (i) Assets pledged to central banks; (ii) assets pledged to a clearing counterparty in excess of the amounts required for clearing; and (iii) assets subject to ordinary course ''banker's liens'' that apply to exposures held in depository accounts or custody accounts.

Other commenters expressed concern that the definition of unencumbered assets in the proposed rule assumes that a firm must actually sell an asset in order to generate liquidity from it, asserting that this is inconsistent with the economic reality of liquidity risk management. In particular, these commenters asserted that assets that hedge trading positions should not be treated as encumbered, as companies can still monetize the asset. They argued that, whether the asset is a trading position or a hedge on a trading position, a company would still be able to generate liquidity from the asset through repurchase agreements or central bank facilities. The commenters recommended that the definition of ''unencumbered'' assets include assets that are comingled with or used as hedges on trading positions or pledged to clearing houses, and asserted that a requirement that assets be segregated in order to qualify as unencumbered would add operational complexity and cost to the practice of liquidity risk management, without a commensurate benefit. Finally, one commenter suggested that highly liquid assets pledged to an FHLB pursuant to a blanket lien that the FHLB does not require as collateral for outstanding advances and other extensions of credit should be deemed unencumbered, as these assets could be released for use elsewhere without diminishing the level of outstanding advances.

The Board is modifying the proposed definition of ''unencumbered'' in the final rule to allow assets that are used as a hedge position to meet the definition, as long as they otherwise meet the other criteria in the definition. The Board believes this change is appropriate to reduce the potential operational burden cited by commenters in identifying and isolating such assets. Further, the Board does not believe that this change would substantially impede the ability of bank holding companies, under most stressed situations, to generate liquidity from these assets as needed. Generally, under the final rule, an asset would be unencumbered if the company is able to demonstrate that it has the ability to monetize the asset and that the proceeds could be made available to the liquidity management function of the company without conflicting with a business risk or management strategy of the company. The Board also believes that assets that are pledged to a central bank or a U.S. government-sponsored enterprise, including FHLBs (if the asset is not securing credit that has been extended and remains outstanding), may be considered as unencumbered. This provision is added to the final rule's definition of unencumbered.

However, the Board believes it is generally not appropriate for a bank holding company to include assets pledged to a counterparty for provisional needs as unencumbered highly liquid assets. In response to commenters' questions regarding assets pledged to a clearing counterparty in excess of the amounts required for clearing and assets subject to ''banker's liens,'' the Board believes these assets must be considered encumbered in most scenarios, as their encumbrance is an ongoing requirement for conducting business with such counterparties, potentially complicating the use of these assets to offset potential outflows in times of stress.

As further support to ensure that highly liquid assets in the buffer are available for a bank holding company's liquidity needs, the bank holding company should periodically monetize a representative portion of its highly liquid assets, through repo or outright sale, in order to test its access to the

market and the effectiveness of its processes for monetization. In addition, the Board would expect the quantity of assets included in the liquidity buffer to vary by the stress scenario type. For example, in computing the liquidity buffer under a scenario in which a banking organization may expect to be forced to post additional collateral (such as a scenario involving idiosyncratic financial deterioration), a bank holding company that has pledged securities in excess of contractual requirements would count a lower portion (or none at all) of the excess pledged assets in its buffer.

c. Discounting and Diversification of Assets in the Liquidity Buffer

As discussed above, in computing the amount of an asset included in the liquidity buffer, the bank holding company must discount the fair value of the asset to reflect any credit risk and market volatility of the asset. Several commenters asked for more clarification on computing the discounts that would be applied to assets included in the buffer. Such discounts should vary depending upon the type and severity of the scenario and should reflect a wide range of risks that could limit a company's ability to liquidate the asset, including discounts associated with currency conversions. The final rule does not dictate the discount percentages that would apply to asset classes in the final rule because the stress tests are based on firm-specific assumptions and a variety of securities, and the appropriate discount percentage may vary based upon the institution to which the stress is applied.

In addition, the proposal provided that the pool of unencumbered highly liquid assets included in the liquidity buffer must be sufficiently diversified by instrument type, counterparty, geographic market, and other liquidity risk identifiers. One commenter suggested that U.S. and foreign sovereign securities be excluded from these diversification requirements. The final rule clarifies that the diversification requirement which applies to most buffer assets does not apply to U.S. Treasuries and U.S. agency securities because of their demonstrated liquid nature under stressed conditions.

In judging the amount of a particular asset class that will be included in its liquidity buffer, a bank holding company should consider all the liquidity risks of the asset class. For instance, the Board observes that currency matching of projected cash inflows and outflows is an important aspect of liquidity risk that a bank holding company should account for in its stress tests and that the risks associated with currency mismatches should be incorporated in a company's liquidity buffer.

d. Use of the Buffer

The proposal did not provide guidance on the circumstances under which a banking organization would be able to use the assets in its liquidity buffer. Commenters requested clarification and provided suggestions relating to the usability of the buffer. One commenter requested that the Board clarify in the rule that, during times of stress, companies may use the liquidity buffer, temporarily falling below the minimum requirement without any adverse outcomes.

While a banking organization generally would be required to maintain an amount of liquid assets in order to meet its 30-day stress projections, there are circumstances under which permitting the banking organization to use these assets would be beneficial for the safety and soundness of the firm and potentially for financial stability. Therefore, the Board anticipates that any supervisory decisions in response to a reduction of a banking organization's liquidity buffer will take into consideration the particular circumstances surrounding the reduction. If a banking organization is experiencing idiosyncratic or systemic stress and is otherwise practicing good liquidity risk management, the Board expects that supervisors would observe the company closely as it uses its liquid resources and work with the company to determine how to rebuild these resources once the stress has passed, through a plan or similar process. However, a supervisory or enforcement action may be appropriate when a company's buffer is reduced substantially, or falls below its stressed liquidity needs as identified by the stress test, because of operational issues or inadequate liquidity risk management. Under these circumstances, as with other regulatory violations, a bank holding company may be required to enter into a written agreement if it does not meet the proposed minimum requirement within an appropriate period of time. As discussed further below, a bank holding company is required to develop a contingency funding plan in which it must identify liquidity stress events and design an event management process that sets out its procedures for managing liquidity during identified liquidity stress events. These procedures must anticipate reductions and subsequent replenishment of highly liquid assets.

10. Short-Term Debt Limits

In the preamble to the proposed rule, the Board noted that the Dodd-Frank Act contemplates additional enhanced prudential standards, including a limit on short-term debt, and requested comment on whether it should establish short-term debt limits in the future. Several respondents were in favor of implementing additional limits on short-term funding. One proponent suggested such limits would help render a bank's funding structure more stable in times of market disruption, asserting that there are shortcomings related to over-reliance on stress testing. Another commenter suggested that a short-term debt limit could work in conjunction with the proposed U.S. LCR, a net stable funding ratio requirement (NSFR),[61] and single counterparty credit limits to mitigate the risk of a disruption in repo markets. However, several commenters asserted that short-term debt limits were inappropriate. Some commenters asserted that a limit on short-term debt would not enhance prudent liquidity risk management, and argued that short-term debt levels should be overseen by prudential supervision on a bank-by-bank basis. One commenter argued that the appropriate level of short-term debt maintained by a company depends upon the mix of its assets and liabilities, and that limits on short-term debt are best addressed as part of limit-setting around liquidity stress testing. Although the Board is not adopting a short-term debt limit requirement in connection with the final rule, the Board is continuing to study and evaluate the benefits to systemic stability from imposing limits on short-term debt.

D. Debt-to-Equity Limits for Bank Holding Companies

Section 165(j) of the Dodd-Frank Act provides that the Board must require a bank holding company to maintain a debt-to-equity ratio of no more than 15-to-1 if the Council determines that such company poses a ''grave threat'' to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company or foreign

[61] While the Basel III LCR is focused on measuring liquidity resilience over a short-term period of severe stress, the NSFR is designed to promote resilience over a one-year time horizon by creating additional incentives for banking organizations and other financial companies that would be subject to the standard to fund their activities with stable sources and encouraging a sustainable maturity structure of assets and liabilities. Currently, the NSFR is in an international observation period, and global implementation is scheduled for 2018. See Basel Committee principles for liquidity risk management, *supra* note 47.

banking organization poses to the financial stability of the United States.[62] The Board is required to promulgate regulations to establish procedures and timelines for compliance with section 165(j).

The domestic proposal defined key terms used in the statute and established a process for applying the debt-to-equity ratio. Under the proposal, ''debt'' and ''equity'' would have had the same meaning as ''total liabilities'' and ''total equity capital'' respectively, as calculated in an identified company's reports of financial condition. The 15-to-1 debt-to-equity ratio would have been calculated as the ratio of total liabilities to total equity capital minus goodwill. A bank holding company for which the Council has made the grave threat determination would receive written notice from the Council, or from the Board on behalf of the Council, of the Council's determination. Within 180 calendar days from the date of receipt of the notice, the bank holding company would have been required to come into compliance with the 15-to-1 debt-to-equity ratio requirement. The proposal would have permitted a company subject to the debt-to-equity ratio requirement to request up to two extension periods of 90 days each to come into compliance with this requirement. Requests for an extension of time to comply would have been required in writing not less than 30 days prior to the expiration of the existing time period for compliance, and the proposal would have required the company to provide information sufficient to demonstrate that the company has made good faith efforts to comply with the debt-to-equity ratio requirement and that each extension would be in the public interest. In the event that an extension of time is requested, the Board would have reviewed the request in light of the relevant facts and circumstances, including the extent of the company's efforts to comply with the ratio and whether the extension would be in the public interest. A company would no longer be subject to the debt-to-equity ratio requirement of the proposed rule as of the date it receives notice of a determination by the Council that the company no longer poses a grave threat to the financial stability of the United States and that the imposition of a debt-to-equity requirement is no longer necessary.

Some commenters requested that the Board clarify the language of ''pose a grave threat to the financial stability of the United States,'' arguing that the statutory meaning is vague. However, the Board's rule establishes the process after the Council makes the ''grave threat'' determination. Because the Council makes the determination of whether a company ''poses a grave threat to the financial stability of the United States,'' the Council is the appropriate party to provide clarity on the grave threat standard.

Some commenters argued that the substitution of ''total liabilities'' for the statutory term ''debt'' would be inappropriate, especially as applied to insurance companies. According to commenters, under statutory accounting principles, insurers account for future liabilities arising from underwritten insurance policies and hold reserves in anticipation of those future liabilities, which are treated as liabilities under accounting rules. Other commenters contended that the measure was duplicative and unnecessary of other measures of leverage, and, as applied to insurance companies, should exclude separate accounts. Another commenter suggested that the measure should focus on activities, arguing that insurance companies measure leverage differently from banks when evaluating the impact of debt issuance on capital adequacy and on financial condition.

There are several common methods of calculating a debt-to-equity ratio, including taking the measure of total liabilities to total equity. The Board chose to define ''debt'' on the basis of ''total liabilities'' as included a company's report of financial condition as set forth on the Board's Form FR Y–9C because the measure of ''total liabilities'' is well understood, objective, transparent, and readily available across all bank holding companies. The alternatives suggested by commenters, which would require the Board to identify categories of liabilities that would be included as ''debt'' or to trace liabilities to certain activities of an institution, would result in a non-transparent system that may result in arbitrary distinctions between certain types of liabilities. In addition, in response to concerns about the debt-to-equity ratio as a duplicative measure, the Board notes that these ratios measure leverage as a ratio of assets to equity rather than debt to equity. With regard to the application of the measure to insurance companies, as further described above, the final rule does not apply the standards to nonbank financial companies supervised by the Board, and the Board will consider such comments in connection with the application of these standards to nonbank financial companies supervised by the Board.

Some commenters suggested that the Board define ''equity'' as ''tangible common equity,'' rather than ''total equity capital.'' Commenters argued that tangible common equity would be understood and able to absorb losses in times of financial stress, whereas ''total equity capital'' would include components such as unrealized gains on securities available for sale and accumulated net gains on cash-flow hedges that are unlikely to be available to absorb losses in times of financial stress. To maintain balance with the broad definition of ''debt'' as ''total liabilities,'' the final rule maintains the definition of ''equity'' as ''total equity capital.'' While the Board agrees with commenters that ''tangible common equity'' is more able to absorb losses in times of stress, the Board notes that a bank holding company subject to this determination will remain subject to the common equity tier 1 capital ratio and capital conservation buffers, which are based on a definition of ''common equity tier 1'' that is more stringent than ''tangible common equity.'' Accordingly, a bank holding company subject to this determination will be required to maintain loss-absorbing capital independent of the debt-to-equity ratio.

Commenters also provided views on the proposed time period in which a company would have been required to comply with the debt-to-equity ratio. Some commenters argued that a shorter period, such as 120 days, would be warranted if a company posed a grave threat to U.S. financial stability. In contrast, another commenter suggested that the Board preserve flexibility to grant additional extensions where more rapid efforts to achieve full compliance may cause a ''fire sale'' of assets. The Board is adopting the requirements as proposed because the combination of the initial 180-day period with the two potential 90-day extension periods balances the certainty of a fixed timetable for a company to come into compliance with regulatory flexibility if additional time is appropriate. Like the proposed rule, the final rule does not establish a specific set of actions to be taken by a company in order to comply

[62] The Dodd-Frank Act requires that, in making its determination, the Council must take into consideration the criteria in Dodd-Frank Act sections 113(a) and (b) and any other risk-related factors that the Council deems appropriate. These factors include, among other things, the extent of the leverage of the company, the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company, and the importance of the company as a source of credit for U.S. households, businesses, and State and local governments and as a source of liquidity for the U.S. financial system. The statute expressly exempts any federal home loan bank from the debt-to-equity ratio requirement. *See* 12 U.S.C. 5366(j)(1).

with the debt-to-equity ratio requirement. The company would, however, be expected to come into compliance with the ratio in a manner that is consistent with the company's safe and sound operation and the preservation of financial stability. For example, a company generally would be expected to make a good faith effort to increase equity capital through limits on distributions, share offerings, or other capital raising efforts prior to liquidating margined assets in order to achieve the required ratio. The Board has amended the final rule for bank holding companies to reflect the procedures for requesting an extension of time in the text of the regulation, making it consistent with the rule for foreign banking organizations.

IV. Enhanced Prudential Standards for Foreign Banking Organizations

A. Background

1. Considerations in Developing the Proposal

The Board is responsible for the overall supervision and regulation of the U.S. operations of all foreign banking organizations.[63] Other federal and state regulators are responsible for supervising and regulating certain parts of the U.S. operations of foreign banking organizations, such as branches, agencies, or bank and nonbank subsidiaries.[64] Under the Board's historic framework for foreign banking organizations, supervisors have monitored the individual legal entities of the U.S. operations of these companies, and the Federal Reserve has aggregated information it receives through its own supervisory process and from other U.S. supervisors to form a view of the financial condition of the combined U.S. operations of the company. In addition, the Federal Reserve has relied on the home country supervisor to supervise a foreign banking organization on a global basis consistent with international standards, and has relied on the foreign banking organization to support its U.S. operations under both normal and stressed conditions.

As discussed in the proposal, the profile of foreign bank operations in the United States changed substantially in the period preceding the financial crisis. U.S. branches and agencies of foreign banking organizations as a group moved from a position of receiving funding from their parent organizations on a net basis in 1999 to providing significant funding to non-U.S. affiliates by the mid-2000s.[65] In 2008, U.S. branches and agencies provided more than $600 billion on a net basis to non-U.S. affiliates. As U.S. operations of foreign banking organizations received less funding, on net, from their parent companies over the past decade, they became more reliant on less stable, short-term U.S. dollar wholesale funding, contributing in some cases to a buildup in maturity mismatches. Trends in the global balance sheets of foreign banking organizations from this period reveal that short-term U.S. dollar funding raised in the United States was used to provide long-term U.S. dollar-denominated project and trade finance around the world as well as to finance non-U.S. affiliates' investments in U.S. dollar-denominated asset-backed securities.[66] Because U.S. supervisors, as host authorities, have more limited access to timely information on the global operations of foreign banking organizations than to similar information on U.S.-based banking organizations, the totality of the risk profile of the U.S. operations of a foreign banking organization can be obscured when these U.S. entities fund activities outside the United States.

In addition to funding vulnerabilities, the U.S. operations of foreign banking organizations became increasingly concentrated, interconnected, and complex after the mid-1990s. By 2007, the top ten foreign banking organizations accounted for over 60 percent of foreign banking organizations' U.S. assets, up from 40 percent in 1995.[67] Moreover, U.S. broker-dealer assets of large foreign banking organizations as a share of their U.S. assets grew rapidly after the mid-1990s.[68] In 2012, five of the top-ten U.S. broker-dealers were owned by foreign banking organizations. In contrast, commercial and industrial lending originated by U.S. branches and agencies of foreign banking organizations as a share of their third-party U.S. liabilities dropped after 2003.[69]

2. The Financial Stability Mandate of the Dodd-Frank Act

In response to the financial crisis, Congress enacted the Dodd-Frank Act, which included multiple measures to promote the financial stability of the United States.[70] Section 165 of the Dodd-Frank Act directs the Board to establish enhanced prudential standards in order to prevent or mitigate risks to U.S. financial stability that could arise from the material financial distress or failure or ongoing activities of U.S. and foreign banking organizations that have total consolidated assets of $50 billion or more. The enhanced prudential standards for foreign banking organizations must include risk-based and leverage capital, liquidity, stress test, and risk management and risk committee requirements, resolution plan and credit exposure report requirements, concentration limits, and a debt-to-equity limit for companies that pose a grave threat to the financial stability of the United States. Section 165 also authorizes the Board to establish a contingent capital requirement, enhanced public disclosures, short-term debt limits, and ''other prudential standards'' that the Board determines are ''appropriate.''

In applying section 165 to a foreign-based bank holding company, the Dodd-Frank Act directs the Board to give due regard to the principle of national treatment and equality of competitive opportunity, and to take into account the extent to which the foreign banking organization is subject, on a consolidated basis, to home country standards that are comparable to those applied to financial companies in the

[63] International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) and Foreign Bank Supervision Enhancement Act of 1991 (12 U.S.C. 3101 note).

[64] For example, the SEC is the primary financial regulatory agency with respect to any registered broker-dealer, registered investment company, or registered investment adviser of a foreign banking organization. State insurance authorities are the primary financial regulatory agencies with respect to the insurance subsidiaries of a foreign banking organization. The OCC, the FDIC, and the state banking authorities have supervisory authority over the national and state bank subsidiaries and federal and state branches and agencies of foreign banking organizations, respectively, in addition to the Board's supervisory and regulatory responsibilities over some of these entities.

[65] Many U.S. branches of foreign banks shifted from the ''lending branch'' model to a ''funding branch'' model, in which U.S. branches of foreign banks borrowed large volumes of U.S. dollars to upstream to their foreign bank parents. These ''funding branches'' went from holding 40 percent of foreign bank branch assets in the mid-1990s to holding 75 percent of foreign bank branch assets by 2009. *See* Form FFIEC 002.

[66] The amount of U.S. dollar-denominated asset-backed securities and other securities held by Europeans increased significantly from 2003 to 2007, much of it financed by U.S. short-term dollar-denominated liabilities of European banks. *See* Ben S. Bernanke, Carol Bertaut, Laurie Pounder DeMarco, and Steven Kamin, *International Capital Flows and the Returns to Safe Assets in the United States, 2003–2007,* Board of Governors of the Federal Reserve System International Finance Discussion Papers Number 1014 (February 2011), *available at: http://www.federalreserve.gov/pubs/ifdp/2011/1014/ifdp1014.htm.*

[67] *See* Forms FR Y–9C, FFIEC 002, FR 2886B, FFIEC 031/041, FR–Y7N/S, X–17A–5 Part II (SEC Form 1695), and X–17A–5 Part IIA (SEC Form 1696).

[68] *See* Forms FR Y–9C, FFIEC 002, FR–Y7, FR 2886B, FFIEC 031/041, FR–Y7N/S, X–17A–5 Part II (SEC Form 1695), and X–17A–5 Part IIA (SEC Form 1696).

[69] *See* Form FFIEC 002.

[70] S. Rep. No. 111–176, p. 2 (April 15, 2010).

United States.[71] Section 165 also directs the Board to take into account differences among nonbank financial companies, bank holding companies, and foreign banking organizations based on a number of factors.[72]

3. Summary of the Proposal

In December 2012, the Board sought comment on the foreign proposal. The proposal presented a set of targeted adjustments to the Board's regulation of the U.S. operations of foreign banking organizations to address risks posed by those entities and to implement the enhanced prudential standards in section 165 of the Dodd-Frank Act.[73] In the proposal, the Board sought to implement section 165 in a manner that enhanced the Board's current regulatory framework for foreign banking organizations in order to mitigate the risks posed to U.S. financial stability by the U.S. activities of foreign banking organizations. These proposed changes were designed to facilitate consistent regulation and supervision of the U.S. operations of large foreign banking organizations. The proposed changes would have also bolstered the capital and liquidity positions of the U.S. operations of foreign banking organizations to improve their resiliency in adverse economic and financial conditions, and help them withstand deteriorations in asset-quality as well as funding shocks. Together, these changes were expected to increase the resiliency of the U.S. operations of foreign banking organizations during normal and stressed periods. A summary of the major components of the proposal is set forth below.

a. Structural Requirements

Presently, foreign banking organizations operate through a variety of structures in the United States. This diversity in structure presented significant challenges to the Board's task of applying the standards mandated by the Dodd-Frank Act both consistently across the U.S. operations of foreign banking organizations, and in comparable ways to large U.S. bank holding companies and foreign banking organizations. The foreign proposal would have applied a structural enhanced prudential standard under which foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $10 billion or more (excluding U.S. branch and agency assets and section 2(h)(2) companies)[74] would have been required to form a U.S. intermediate holding company. The foreign banking organization would have been required to hold its interest in U.S. bank and nonbank subsidiaries of the company, except for any company held under section 2(h)(2) of the Bank Holding Company Act, through the U.S. intermediate holding company.

As noted in the proposal, the U.S. intermediate holding company requirement would have provided consistency in the application of enhanced prudential standards to the U.S. operations of foreign banking organizations with a large U.S. subsidiary presence. In addition, a U.S. intermediate holding company structure would have provided the Board, as umbrella supervisor of the U.S. operations of foreign banking organizations, with a more uniform platform on which to implement its supervisory program across the U.S. operations of foreign banking organizations. A foreign banking organization would have been permitted to continue to operate in the United States through branches and agencies subject to the enhanced prudential standards included in the proposal for U.S. branches and agencies of foreign banks.[75]

b. Capital Requirements

Under the proposal, a U.S. intermediate holding company would have been subject to the same risk-based and leverage capital standards applicable to U.S. bank holding companies, regardless of whether it controlled a subsidiary depository institution. These standards include minimum risk-based and leverage capital requirements and applicable capital buffers. In addition, under the proposal, U.S. intermediate holding companies with total consolidated assets of $50 billion or more would have been subject to the capital plan rule.[76] Furthermore, any foreign banking organization with total consolidated assets of $50 billion or more generally would have been required to meet home country risk-based and leverage capital standards at the consolidated level that are consistent with internationally-agreed risk-based capital and leverage standards published by the Basel Committee (Basel Capital Framework), including the risk-based capital and leverage requirements included in Basel III, on an ongoing basis.[77] Absent home-country standards consistent with the Basel Capital Framework, a foreign banking organization would have been required to demonstrate to the Board's satisfaction that it would have met Basel Capital Framework standards at the consolidated level were those standards applied.

The risk-based and leverage capital requirements were intended to strengthen the capital position of the U.S. operations of foreign banking organizations and provide a consolidated capital treatment for these operations. Aligning the capital requirements for U.S. intermediate holding companies formed by foreign banking organizations and U.S. bank holding companies is in line with long-standing international capital agreements, which provide flexibility to host jurisdictions to establish capital requirements on a national treatment basis for local subsidiaries of foreign banking organizations.

c. Risk Management Requirements

The proposal would have required any foreign banking organization with publicly traded stock and total consolidated assets of $10 billion or more and any foreign banking organization, regardless of whether its stock is publicly traded, with total consolidated assets of $50 billion or more, to certify that it maintains a U.S. risk committee. In addition, a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more would have been required to employ a U.S. chief risk officer and implement enhanced risk

[71] 12 U.S.C. 5365(b)(2). Section 165(b)(2) of the Dodd-Frank Act refers to ''foreign-based bank holding company.'' Section 102 of the Dodd-Frank Act defines ''bank holding company'' for purposes of Title I of the Dodd-Frank Act to include foreign banking organizations that are treated as bank holding companies under section 8(a) of the International Banking Act (12 U.S.C. 3106(a)).

[72] These factors are described in section I.A of this preamble.

[73] The proposal also addressed early remediation requirements in Dodd-Frank Act section 166. As noted above, the Board is not adopting a final rule relating to section 166 at this time.

[74] Under the proposal, U.S. non-branch assets would have been calculated based on the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company). A company would have been permitted to reduce its combined U.S. assets for this purpose by the amount corresponding to balances and transactions between any U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed.

[75] The proposal would have referred to all U.S. branches and U.S. agencies of a foreign bank as the ''U.S. branch and agency network.'' The final rule does not use the defined term ''U.S. branch and agency network,'' and simply refers to ''U.S. branches and U.S. agencies of a foreign bank.

[76] *See* 12 CFR 225.8.

[77] *See* Basel III: A global framework for more resilient banks and banking systems (December 2010), *available at: http://www.bis.org/publ/bcbs189.pdf.* Consistency with the internationally-agreed standards would be measured in accordance with the transition period set forth in the Basel Capital Framework.

management requirements generally consistent with the requirements in the domestic proposal. However, the foreign proposal would have implemented these requirements in a manner that provided some flexibility for foreign banking organizations and recognized the complexity in applying risk-management standards to foreign banking organizations that maintain U.S. branches and agencies, as well as bank and nonbank subsidiaries.

d. Liquidity Requirements

The proposal would have applied a set of enhanced liquidity standards to the U.S. operations of foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more that were comparable to those proposed for large U.S. bank holding companies in the domestic proposal. These standards include requirements to conduct monthly liquidity stress tests over a series of time intervals out to one year, and to hold a buffer of highly liquid assets to cover the first 30 days of stressed cash-flow needs. These standards were designed to increase the resiliency of the U.S. operations of foreign banking organizations during times of stress and to reduce the risk of asset fire sales if U.S. dollar funding channels became strained and short-term debt could not easily be rolled over.

Under the proposal, the liquidity buffer would have separately applied to the U.S. branches and agencies of a foreign bank and the U.S. intermediate holding company of a foreign banking organization with combined U.S. assets of $50 billion or more. The proposal would have required the U.S. intermediate holding company to maintain the entire 30-day buffer in the United States. In recognition that U.S. branches and agencies are not separate legal entities from their parent foreign bank but can assume liquidity risk in the United States, the proposal would have required the U.S. branches and agencies of a foreign bank to maintain the first 14 days of their 30-day liquidity buffer in the United States and would have permitted the U.S. branches and agencies to meet the remainder of this requirement at the consolidated level.

e. Stress Testing

The proposal would have implemented stress-test requirements for a U.S. intermediate holding company in a manner parallel to those applied to U.S. bank holding companies.[78] The parallel implementation would have helped to ensure that U.S. intermediate holding companies have sufficient capital in the United States to withstand a severely adverse stress scenario. In addition, a foreign banking organization with total consolidated assets of $50 billion or more that maintained U.S. branches and agencies would have been required to be subject to a consolidated capital stress testing regime that is broadly consistent with the stress-test requirements in the United States. If the foreign banking organization had combined U.S. assets of $50 billion or more, the proposal would have required it to provide information to the Board regarding the results of the consolidated stress tests.

The foreign proposal also included single counterparty credit limits and early remediation requirements. However, these standards are still under development and so are not discussed here.

4. Targeted Adjustments to Foreign Bank Regulation

a. Policy Considerations for the Proposal

As discussed above, the Federal Reserve traditionally has relied on the home-country supervisor to supervise a foreign banking organization on a global basis, consistent with international standards, which are intended to address the risks posed by the consolidated organization and to help achieve global competitive equity. The Federal Reserve has relied on the parent foreign banking organization to support its U.S. operations under both normal and stressed conditions.[79] The proposal would have adjusted this traditional approach by requiring a foreign banking organization to organize its U.S. subsidiaries under a single U.S. intermediate holding company and applying enhanced prudential standards to the U.S. intermediate holding company.

Some commenters supported the proposal as an enhancement of U.S. financial stability and expressed the view that the proposal would reduce reliance on a foreign banking organization to keep its U.S. entities solvent, particularly where both the home-country parent and the U.S. operations come under simultaneous stress. However, other commenters questioned the need for such adjustment and asserted that the Board already has adequate tools and information for supervising the U.S. operations of foreign banking organizations. Commenters asserted that the goals of the proposal could be achieved without, for example, the U.S. intermediate holding company requirement. For example, as an alternative to the proposal, some commenters suggested that the Board supplement its existing regulatory approach by requiring more information from home-country supervisors. Another commenter suggested that, instead of finalizing the proposed rules, the Board condition exemptions to regulatory requirements on the receipt of appropriate information and use its strength-of-support assessment process[80] as a framework for evaluating home-country regulation.

Congress directed the Board to adopt enhanced prudential standards for foreign banking organizations in order to mitigate risks to U.S. financial stability posed by foreign banking organizations. As discussed above, the concentration, complexity, and interconnectedness of the U.S. operations of foreign banking organizations present risks to U.S. financial stability that are not addressed by the traditional framework. The modifications to the Board's current supervisory approach suggested by commenters—such as providing the Federal Reserve with additional information, or building upon the existing strength-of-support framework—would not provide a consistent platform for regulating and supervising the U.S. operations of foreign banking organizations or facilitate the application of enhanced prudential standards to the U.S. non-branch operations of a foreign banking organization.

Many commenters suggested that the Board did not adequately tailor the enhanced prudential standards set forth in the proposal to the systemic risk posed by foreign banking organizations. According to these commenters, the proposal did not reflect consideration of either the meaningful differences among foreign banking organizations in their systemic risk characteristics or whether actual threats to U.S. financial stability would justify the requirement for a given foreign banking organization. One commenter expressed the view that only a very small subset of foreign banking organizations has the potential to present risks to U.S. financial stability. Others asserted that a global consolidated assets measure would overstate the U.S. systemic risk posed

[78] *See* 77 FR 62378 (October 12, 2012); 77 FR 62396 (October 12, 2012).

[79] International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) and Foreign Bank Supervision Enhancement Act of 1991 (12 U.S.C. 3101 note).

[80] See, e.g., Supervision & Regulation Letter 00–14 (October 23, 2000).

by many foreign banking organizations. Similarly, other commenters observed that many foreign banking organizations do not rely on their U.S. branches as a net source of U.S. dollar funding for their non-U.S. operations.

The Dodd-Frank Act requires the Board to impose enhanced prudential standards on all foreign banking organizations with global consolidated assets of $50 billion or more, and contemplates that the Board will tailor the requirements depending on the risk presented to U.S. financial stability by these institutions. The Board believes that the measures included in the final rule are appropriate for managing the risks to U.S. financial stability that may be posed by such firms. The standards that the Board has developed are tailored such that a foreign banking organization with U.S. operations that pose less risk will generally make fewer changes to their U.S. operations to come into compliance with the new standards. For instance, the standards applicable to foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion are substantially less as compared to those applicable to foreign banking organizations with combined U.S. assets of $50 billion or more. In addition, as explained in more detail in section IV.B of this preamble, a foreign banking organization with less than $50 billion in U.S. non-branch assets will not be required to form a U.S. intermediate holding company. The liquidity requirements applicable to a foreign banking organization with combined U.S. operations of $50 billion or more are calibrated such that a foreign banking organization whose U.S. operations have maturity-matched cash inflows and outflows is unlikely to be substantially affected by these requirements. The risk-based capital rules applicable to U.S. intermediate holding companies also calibrate capital requirements to the level of risk posed by the assets and off-balance sheet exposures of the U.S. intermediate holding company, including the degree of interconnectivity. Foreign banking organizations that already maintain sufficient risk-based or leverage capital at their U.S. operations will not have to reallocate to or raise capital for those operations.

The proposal also described recent modifications to the regulation of internationally active banks adopted or contemplated by other national authorities.[81] These modifications include increased local liquidity and capital requirements, limits on intragroup exposures of domestic banks to foreign subsidiaries, and requirements to prioritize or segregate home country retail operations. Commenters argued that it would be premature for the Board to modify its regulatory approach before these adjustments are complete. Commenters also argued that the Board should consider home-country legal or political developments that could potentially limit a foreign bank parent's ability to support its U.S. operations in the overall context of factors that would determine a foreign banking organization's practical ability to support its U.S. operations.

While the Board considered these modifications and legal and political developments as factors in its assessment of the likelihood that a foreign bank parent will be willing and able to support its U.S. operations in the future, the proposal and the final rule respond to a broader set of considerations that are intended to address the financial stability risks posed by the U.S. operations of foreign banking organizations. While the Board recognizes the important initiatives under development in other countries, the Board does not believe it is appropriate to await the outcomes of such initiatives before adopting enhanced prudential standards to address risks to U.S. financial stability. As discussed below, the Board will monitor supervisory approaches that are implemented throughout the world and may take further action in the future as appropriate.

Some commenters asserted that the proposal's narrative describing the period leading up to and during the financial crisis omitted the role that foreign banking organizations played in supporting financial stability, such as through acquisitions of failed bank and nonbank operations of U.S. financial companies. One commenter stated that foreign banking organizations undertook such acquisitions with an expectation that cross-border supervisory and regulatory standards would not be significantly disrupted.

The Board recognizes the important role that foreign banking organizations play in the U.S. financial sector. The presence of foreign banking organizations in the United States has brought competitive and countercyclical benefits to U.S. markets. The Board acknowledges that there have been significant developments, both in the United States and overseas, to strengthen capital positions since the crisis. However, these changes in the international regulatory landscape, and the likelihood of changes still to come, are not a substitute for enhancing regulation of the foreign banking organizations that have large U.S. operations and pose risks to U.S. financial stability.

While the Board acknowledges that some foreign banking organizations undertook cross-border acquisitions during the financial crisis, the crisis also highlighted weaknesses in the existing framework for supervising, regulating, and otherwise constraining the risks of major financial companies, including the U.S. operations of foreign banking organizations. The Board believes the requirements contained in the final rule are appropriate in light of the statutory directive to impose enhanced prudential standards on domestic and foreign firms that address these risks, and by the Board's mandate to minimize risks to U.S. financial stability.

Some commenters argued that the proposal would prevent foreign banking organizations from managing capital and liquidity on a centralized basis. These commenters asserted that the proposal would inhibit diversification of risk and could reduce a foreign banking organization's flexibility to respond to stress in other parts of the organization on a continual basis. These commenters also indicated that they expected the proposed requirements to increase the need for foreign banking organizations to take advantage of ''lender of last resort'' government facilities, because banks that currently manage capital and liquidity on a centralized basis would lose the ability efficiently to move those resources to the branches or operations that need it the most.

While the proposed requirements could incrementally increase costs and reduce flexibility of internationally active banks that primarily manage their capital and liquidity on a centralized basis, they would increase the resiliency of the U.S. operations of a foreign banking organization, the ability of the U.S. operations to respond to stresses in the United States, and the stability of the U.S. financial system. A firm that relies significantly on centralized resources may not be able to provide support to all parts of its organization. The Board believes that the final rule reduces the need for a foreign banking organization to contribute additional capital and liquidity to its U.S. operations during times of home-country or other international stresses, thereby reducing the likelihood that a banking organization that comes under stress in multiple jurisdictions will be required to choose which of its operations to support. Finally, the Board

[81] *See* 77 FR 76631 note 13.

notes that requiring foreign banking organizations to maintain financial resources in the jurisdictions in which they operate subsidiaries is consistent with existing Basel Committee agreements and international regulatory practice. U.S. banking organizations operate in overseas markets that apply local regulatory requirements to commercial and investment banking activities conducted in locally incorporated subsidiaries of foreign banks. In the Board's view, the final rule establishes a regulatory approach to foreign banking organizations that is similar in substance to that in other jurisdictions.

b. Taking Into Account Home-Country Standards

In applying section 165 to a foreign-based bank holding company, the Dodd-Frank Act directs the Board to take into account the extent to which the foreign banking organization is subject, on a consolidated basis, to home country standards that are comparable to those applied to financial companies in the United States.[82] This direction requires the Board to consider the regulatory regimes applicable to foreign banking organizations abroad when designing the enhanced prudential standards for foreign banking organizations.

Commenters argued that the Board did not adequately take into account home country standards when developing the proposal. For instance, commenters urged the Board to rely on home country standards in applying the enhanced prudential standards, absent a material inconsistency that could be addressed through targeted U.S. regulation. Other commenters suggested that the Board incorporate a ''substituted compliance'' framework into the rule, which would defer to home-country standards where the home country has adopted standards similar to those included in the proposal.

The Board has taken into account home country standards as required by section 165 in the development of the proposed and final rules. In recognition of the home-country standards and the home-country supervisory regime applicable to foreign banks, the final rule continues to permit foreign banks to operate through branches and agencies in the United States on the basis of their home-country capital. Accordingly, the final rule does not apply risk-based or leverage capital standards or stress testing standards to U.S. branches and agencies of foreign banking organizations. In addition, the proposed and final risk management standards provide flexibility for foreign banking organizations to rely on home-country governance structures to implement certain elements of the final rule's risk-management requirements by generally permitting a foreign banking organization to establish its U.S. risk committee as a committee of its global board of directors.

While taking home country standards into account, the final rule recognizes that foreign jurisdictions do not calibrate or construct their home country standards to address U.S. exposures or the potential impact of those exposures on the U.S. financial system.[83] The consideration of the home country standards applicable to foreign banking organizations must be done in light of the general purpose of section 165, which is ''to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities,'' of these firms. The final rule, with the requirement that large foreign banking organizations establish a U.S. intermediate holding company and look to home country standards in operating branches in the United States, attempts to balance these two considerations.[84]

Commenters argued that the Board is required to engage in an institution-specific analysis of comparable consolidated home-country standards because of the statute's use of the singular term ''foreign financial company.'' Commenters further argued that that directive requires the Board to consider the home-country regime applicable to a foreign banking organization and the effect of that regime on the U.S. operations of the specific foreign banking organization.[85]

The Board observes that the statute permits it to promulgate standards by regulation and permits the Board to tailor standards by category of institution, suggesting that Congress did not require an institution-specific analysis in establishing the standards. Furthermore, the final rule applies an institution-specific analysis in evaluating comparable consolidated home-country standards in determining whether the home-country capital and stress test standards meet the requirements of the final rule, as discussed further in those sections of the preamble. With respect to all standards, the Board's supervisory approach will be tailored to the size and complexity of the company.

Other commenters argued that, because of parallel statutory language regarding home country standards, the Board's implementation of section 165 should parallel its implementation of the Gramm-Leach-Bliley Act provision[86] regarding a foreign banking organization's ability to qualify as a financial holding company.[87] These provisions of the Gramm-Leach-Bliley Act do not reference home-country standards, and, furthermore, were not motivated by the financial stability concerns that motivated Title I of the Dodd-Frank Act. Therefore, in

[82] See supra note 71.

[83] Section 165(b)(2) requires the Board to give due regard to the principle of national treatment and equality of competitive opportunity. In addition, section 165(b)(3)(A) requires the Board to ''take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies [with total consolidated assets of $50 billion or more], based on the factors described in section 113(a) and (b) of the Dodd-Frank Act,'' which include ''the amount and nature of the United States financial assets of the company,'' ''the amount and nature of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding,'' and ''the extent and nature of the United States related off-balance-sheet exposures of the company.'' The proposed enhanced prudential standards were designed to ensure that financial resources required to be maintained in the United States would appropriately take into account the U.S. financial assets, liquidity, and off-balance-sheet exposures of, and the systemic risk posed by, the U.S. operations of foreign banking organizations, in accordance with the statutory factors.

[84] Where courts have reviewed agency interpretations of statutes which require an agency to ''take into account'' a number of factors, courts have given the agencies broad discretion to balance those factors. Courts require that the agency compile a record on which it based its decision, but generally defer to the expertise of the agency in determining how to apply the factors and the relative weight given to each factor. *See Lignite Energy* v. *EPA,* 198 F.3d 930 (D.C. Cir. 1999); *Weyerhaeuser* v. *EPA,* 590 F.2d 1011 (D.C. Cir. 1978); *National Wildlife Federation* v. *EPA,* 286 F.3d 554 (D.C. Cir. 2002); *Trans World Airlines, Inc.* v. *Civil Aeronautics Board,* 637 F.2d 62 (2d Cir. 1980).

[85] Section 165(b)(2) provides: ''In applying the standards set forth in paragraph (1) to any foreign nonbank financial company supervised by the Board of Governors or foreign-based bank holding company, the Board shall—(A) give due regard to the principle of national treatment and equality of competitive opportunity, and (B) take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.''

[86] Section 141 of Public Law 106–102, 113 stat. 1139 (1999) (providing that, in permitting a foreign banking organization to engage in expanded financial activities permissible for a bank holding company that is a financial holding company, ''the Board shall apply comparable capital and management standards to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, giving due regard to the principle of national treatment and equality of competitive opportunity.'')

[87] *See* 12 CFR 225.90 (requiring that a foreign banking organization be well capitalized and well managed and setting forth the standards to determine whether a foreign banking organization is well capitalized and well managed).

interpreting the standards the Board must apply to foreign banking organizations under section 165 of the Dodd-Frank Act, the Board does not believe that the Gramm-Leach-Bliley Act provisions are controlling.

c. National Treatment

The Dodd-Frank Act requires the Board to give due regard to national treatment and equality of competitive opportunity, which generally means that foreign banking organizations operating in the United States should be treated no less favorably than similarly-situated U.S. banking organizations and should generally be subject to the same restrictions and obligations in the United States as those that apply to the domestic operations of U.S. banking organizations.

While some commenters endorsed the proposal as facilitating equal treatment of large foreign banking organizations and domestic bank holding companies, other commenters suggested that particular elements of the proposal did not give adequate regard to the principle of national treatment. For instance, many commenters argued that foreign banking organizations were disadvantaged by the fact that the enhanced prudential standards would apply to them on a sub-consolidated level (meaning, only to their U.S. operations), whereas the standards would apply to U.S. bank holding companies on a consolidated basis.

The principles of national treatment and equality of competitive opportunity were central considerations in the design of the enhanced prudential standards for foreign banking organizations. The standards applied to the U.S. operations of foreign banking organizations are broadly consistent with the standards applicable to U.S. bank holding companies. In particular, a U.S. firm that proposes to conduct both banking operations and nonbank financial operations must (with a few limited exceptions) form a bank holding company or savings and loan holding company subject to supervision and regulation by the Board. The U.S. intermediate holding company requirement subjects foreign banking organizations with large U.S. banking operations to comparable organizational and prudential standards. Foreign banking organizations operating in the United States generally are treated no less favorably, and are subject to similar restrictions and obligations, as similarly-situated U.S. banking organizations.

To the extent that there are differences in the application of the standards for U.S. bank holding companies and foreign banks, the differences generally reflect the structural differences between foreign banking organizations' operations in the United States and U.S. bank holding companies. For instance, because the final rule permits U.S. branches and agencies of foreign banks to continue to operate on the basis of the foreign bank's capital, the final rule does not impose capital or stress testing requirements on U.S. branches and agencies of foreign banks.

Commenters' concerns regarding national treatment with respect to particular enhanced prudential standards, and the Board's response to such concerns, are discussed further in the relevant section below describing each prudential standard.

d. International Regulatory Cooperation

Many commenters asserted that the proposal represented a retreat from the Board's past practice of international regulatory coordination and cooperation. These commenters stated that the Board's international commitments place a strong emphasis on cooperation, sharing of information, and coordination for internationally active banks. Many of these commenters urged the Board to follow the G–20's call for regulatory cooperation, and asserted that the Board should work within the international fora to address its concerns about systemic stability.[88] Several commenters requested that the Board conduct a quantitative impact study on the effect of the proposal or on particular aspects of the proposal before adopting a final rule. One commenter suggested that the Board should recommend steps that banking organizations and regulators could take to foster international cooperation and asserted that the Board should work through international agreements by, for example, obtaining pledges among regulators to maintain intra-group services and support, requiring home country consultation before host country supervisors may make managerial changes, and providing a sunset date for any provision of the final rule that is addressed by an international agreement in the future.

The Board has long worked to foster cooperation among international regulators, and actively participates in international efforts to improve cooperation among supervisors around the world. As a general matter, these supervisors have responded to the lessons learned during the recent financial crisis by enhancing the supervisory and regulatory standards that apply to their banking organizations. The Board has been working closely with its international counterparts and through international fora, such as the Basel Committee and the FSB, to develop common approaches that strengthen financial stability as well as the regulation of financial organizations. While these efforts often lead to unified approaches, such as the Basel III capital and liquidity frameworks, in some cases countries move at different paces and develop supplemental solutions that are tailored to the legal framework, regulatory system, and industry structure in each jurisdiction. For example, the United States has required U.S. banking organizations to meet a minimum leverage ratio since the 1980s, and the United States has long had strict activity restrictions on companies that control banks.

The Board will continue to work with its international counterparts to strengthen the global financial system and financial stability. As regulatory and supervisory standards are implemented throughout the world, the Board and its international supervisory colleagues will gain further insight into which approaches are most effective in improving the resilience of banking organizations and in protecting financial stability, and the Board will take further action as appropriate.

While the Board considered commenters' proposals for various regulatory agreements, the Board is concerned that such proposals may not adequately address risks to U.S. financial stability. Localized stress on internationally active financial institutions may trigger divergent national interests and increase systemic instability. Commenters' concerns regarding regulatory fragmentation also should be mitigated by the final rule's emphasis on the Basel Capital Framework, both in the United States and overseas. With respect to commenters' proposals for sunset dates, the Board intends to take further action as necessary depending on the outcomes of international regulatory agreements, but does not believe that a sunset provision in the final rule would be appropriate.

Several commenters focused on the potential effect of the proposal on cross-border resolution. One commenter approved of the proposal on the grounds that requiring a U.S. intermediate

[88] For example, commenters cited ''Declaration: Summit on Financial Markets and the World Economy'' (Nov. 15, 2008), *available at: http://www.g20.utoronto.ca/2008/2008declarationlll5.html*; and ''The G–20 Toronto Summit Declaration'' (June 26–27, 2010), *available at: http://www.g20.utoronto.ca/2010/to-communique.html*.

holding company for large foreign banking organizations would create a consolidated U.S. legal entity that can be spun off from a troubled parent or placed into receivership under Title II of the Dodd-Frank Act. However, most commenters asserted that the proposal would present impediments to effective cross-border resolution. Commenters argued that the Board was signaling that it lacks confidence in cross-border resolution, which could reduce other regulators' incentives to cooperate, both in advance of and during a crisis. The Board notes, however, that multiple jurisdictions apply prudential requirements to commercial and investment banking activities conducted in locally incorporated subsidiaries of foreign banks. In the Board's view, and as noted above, the final rule will result in a regulatory approach that is substantively similar to that which now exists in some other jurisdictions, and is therefore not inconsistent with coordinated resolution. Further, a U.S. intermediate holding company would facilitate an orderly cross-border resolution of a foreign banking organization with large U.S. subsidiaries by providing one top-tier U.S. holding company to interface with the parent foreign banking organization in a single-point-of-entry resolution conducted by its home country resolution authority (which is the preferred resolution strategy of many foreign banking organizations) or to serve as the focal point of a separate resolution of the U.S. operations of a foreign banking organization in a multiple-point-of-entry resolution (which is the preferred resolution strategy of other foreign banking organizations).

Commenters also asserted that the Board had not shown that it adequately considered the risks to financial stability that could result from measures taken by other jurisdictions in response to the final rule. Most of these commenters asserted that the proposal could invite retaliatory measures from other jurisdictions, and argued that fragmented, nationalized financial regulation would make the United States less financially stable. The Board has considered the possibility that the proposal may affect the environment for U.S. banking organizations operating overseas. As noted above, U.S. banking organizations already operate in a number of overseas markets that apply local regulatory requirements to their local commercial banking and investment banking subsidiaries. In addition, the United Kingdom, which is host to substantial operations of U.S. banking organizations, applies local liquidity standards to commercial banking and broker-dealer subsidiaries of non-U.K. banks operating in their market that are similar to the requirements included in the Board's proposal. While most other jurisdictions have not imposed similar liquidity requirements on branches and agencies, the Board took into account the particular role of U.S. branches and agencies in funding markets, especially in U.S.-dollar denominated short-term wholesale funding markets, in its evaluation of measures for protecting U.S. financial stability, and has determined that the requirements imposed upon branches and agencies that operate in the United States are appropriate. With respect to requests for quantitative impact studies on the proposal as a whole or on aspects of the proposal in particular, as noted above, the Board and its international supervisory colleagues will gain further insight into which regulatory approaches are most effective in improving the resilience of banking organizations and in protecting financial stability over time, and the Board will take further action as appropriate.

Some commenters expressed concern that the proposal could jeopardize transatlantic trade agreement negotiations, or that the proposal was protectionist and antithetical to fair, free and open markets. The final rule, however, provides no barriers to entry or operation in the United States that contravene national treatment. The final rule imposes requirements on foreign banking organizations that are comparable to those required of U.S. organizations and are based in prudential regulation.

B. U.S. Intermediate Holding Company Requirement

Under the proposal, foreign banking organizations with total consolidated assets of $50 billion or more and U.S. non-branch assets of $10 billion or more [89] would have been required to form a U.S. intermediate holding company. The foreign banking organization would have been required to hold its interest in U.S. bank and nonbank subsidiaries of the company, except for any company held under section 2(h)(2) of the Bank Holding Company Act, through the U.S. intermediate holding company.

1. Adopting the U.S. Intermediate Holding Company Requirement as an Additional Prudential Standard

Some commenters questioned whether the Board could adopt the U.S. intermediate holding company requirement because it is not an enumerated standard in section 165. In support of their view, commenters argued that the U.S. intermediate holding company was a policy measure that would be appropriately established through the legislative, rather than the rulemaking, process. Commenters argued that the Board's authority to adopt ''additional prudential standards'' gives the Board flexibility to create targeted prudential requirements such as contingent capital and short-term debt requirements, and characterized the U.S. intermediate holding company requirement as a more significant change not within that authority. These commenters also contended that the fact that Congress had provided for the establishment of a U.S. intermediate holding company in other sections of the Dodd-Frank Act in different contexts suggested that Congress did not intend for a U.S. intermediate holding company to be used in establishing enhanced prudential standards under section 165.[90] Commenters also questioned whether the Board had adequately demonstrated that the proposed U.S. intermediate holding company standard was appropriate to address the financial stability concerns posed by the U.S. operations of foreign banking organizations.

Section 165 does not itself require that a foreign banking organization establish a U.S. intermediate holding company. However, section 165 permits the Board to establish any additional prudential standard for covered companies if the Board determines that the standard is appropriate. Section 165 does not define what it means for an additional prudential standard to be appropriate, although it would be consistent with the standards of legal interpretation to look to the purpose of the authority to impose the requirement. In this case, section 165 specifically explains that its purpose is to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions.[91] The U.S. intermediate holding company requirement directly addresses the risks to the financial stability of the United

[89] Under the proposal, U.S. non-branch assets would have been based on the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company).

[90] *See* sections 167(b) and 626 of the Dodd-Frank Act.

[91] Section 165(a)(1) of the Dodd-Frank Act; 12 U.S.C. 5365(a)(1).

States by increasing the resiliency of the U.S. operations of large foreign banking organizations. Foreign banking organizations with U.S. non-branch assets of $50 billion or more are large, complex, and interconnected institutions, and generally have a U.S. risk profile similar to U.S. bank holding companies of total consolidated assets of $50 billion or more. The U.S. intermediate holding company requirement also provides for consistent application of capital, liquidity, and other prudential requirements across the U.S. non-branch operations of the foreign banking organization and a single nexus for risk management of those U.S. non-branch operations, facilitating application of the mandatory enhanced prudential standards, increasing the safety and soundness of and providing for consolidated supervision of these operations. Last, the U.S. intermediate holding company requirement facilitates a level playing field between foreign and U.S. banking organizations operating in the United States, in furtherance of national treatment and competitive equity. For these reasons, the Board believes that the U.S. intermediate holding company is an appropriate additional enhanced prudential standard under section 165, in furtherance of the statutory directive to prevent or mitigate risks to U.S. financial stability.

While commenters argued that the inclusion of an intermediate holding company requirement in other sections of the Dodd-Frank Act suggests that Congress did not intend for the Board to adopt the requirement in connection with Dodd-Frank Act section 165, the Board believes that the provisions that commenters cite serve to acknowledge the U.S. intermediate holding company as a tool to facilitate the supervision of financial activities of a company by requiring the company to move the activities into or under a single entity.[92] The U.S. intermediate holding company requirement would assist in the supervision of financial activities of the U.S. intermediate holding company, while permitting subsidiaries held under section 2(h)(2) of the Bank Holding Company Act[93] to remain outside of the U.S. intermediate holding company.

In establishing the enhanced prudential standards under section 165, the statute requires the Board to consider a number of factors, including those relating to a foreign banking organization's complexity. This suggests that the Board could adopt additional prudential standards to address such complexity. The Board also is authorized by the Bank Holding Company Act,[94] the Federal Deposit Insurance Act,[95] and the International Banking Act[96] to ensure that bank holding companies and foreign banking organizations operating in the United States conduct their operations in a safe and sound manner. Consistent with all of these authorities, the provisions in the final rule will help the Board supervise foreign banking organizations for safety and soundness.

In addition to the requirements of the final rule, foreign banking organizations will continue to be subject to Board rules and guidance that are otherwise applicable. For instance, a foreign banking organization will be subject to all applicable requirements in the Bank Holding Company Act, Regulation Y, and Regulation K.[97] In addition, U.S. intermediate holding companies that are bank holding companies will generally be subject to the rules and regulations applicable to a bank holding company (other than the enhanced prudential standards for bank holding companies set forth in this final rule or otherwise as specifically provided).

2. Restructuring Costs

Some commenters expressed concern that the costs of the corporate reorganization necessary to comply with the proposed U.S. intermediate holding company requirement would not be justified by the financial stability benefit of the requirement. Commenters argued that the initial costs of the proposal could be in the hundreds of millions of dollars, and one commenter estimated that the one-time cost of coming into compliance with the proposal could be $100 million to $250 million, with annual ongoing costs of $25–50 million (excluding tax costs). Commenters cited a variety of costs for restructuring their operations to transfer subsidiaries to the intermediate holding company, including obtaining valuation opinions and third-party consents, restructuring transaction-booking trade flows, reallocating assets, revising employment contracts, and novating contracts and guarantees. Commenters also cited the costs of creating additional management and governance structures and systems for calculating capital; modifying information technology systems; establishing new governance and funding mechanisms; and issuing equity instead of debt to capitalize the U.S. intermediate holding company. Other commenters focused on the range of processes, tools, and resources that would need to be deployed to manage stress-testing requirements. Commenters also observed that U.S. bank holding companies would not be subject to the costs of the reorganization.[98]

Commenters also expressed concern that the tax costs of restructuring the U.S. operations would be significant. The tax costs cited included foreign transfer taxes and other non-U.S. costs, as well as costs imposed by the U.S. tax authorities and various state taxes. One commenter requested that the Board discuss with tax authorities or other relevant authorities the application of a simple accounting and tax treatment for transferring subsidiaries to a U.S. intermediate holding company. Commenters also specifically cited the applicability of the U.S. tax consolidation rules and the effect of the European Commission's proposal for a financial transaction tax.

Commenters argued that these costs were exacerbated by the proposed one-year transition period, particularly in light of the costs associated with complying with other regulatory initiatives. Some commenters argued that the Board should provide a 2-year or 36-month transition period, and other commenters requested that the transition period be harmonized with the transition period for the agreements reached by the Basel Committee in Basel III or the adoption of other jurisdictions' comparable regulations.

The restructuring costs cited by commenters will in many cases depend on the existing complexity of a given foreign banking organization's U.S.

[92] Under section 167 of the Dodd-Frank Act, the Board may require a nonbank financial company that conducts commercial and financial activities to establish a U.S. intermediate holding company and conduct all or a portion of its financial activities in that intermediate holding company. 12 U.S.C. 5367. Similarly, under section 626 of the Dodd-Frank Act, the Board may require a grandfathered unitary savings and loan holding company that conducts commercial activities to establish and conduct all or a portion of its financial activities in or through a U.S. intermediate holding company, which shall be a savings and loan holding company. 12 U.S.C. 1467b.

[93] As further described below in section IV.B.5 of this preamble, the final rule also permits limited types of other subsidiaries to be held outside the U.S. intermediate holding company.

[94] 12 U.S.C. 1841 *et seq.*

[95] 12 U.S.C. 1818 *et seq.*

[96] 12 U.S.C. 3101 *et seq.*

[97] 12 U.S.C. 1841 *et seq;* 12 CFR Part 211; 12 CFR Part 225.

[98] Commenters also expressed concern that foreign banking organizations using the advanced approaches risk-based capital rules would be forced to develop U.S.-specific models for calculating risk-weighted assets, and urged the Board to permit foreign banking organizations to use methodologies approved by home-country supervisors. In the final rule, and as described further below, U.S. intermediate holding companies are not subject to the advanced approaches risk-based capital rules, regardless of whether they meet the thresholds for application of those rules.

operations. Some foreign banking organizations subject to the U.S. intermediate holding company requirement in the final rule may have complex operations that will require substantial reorganization to comply with the requirement. Other foreign banking organizations, however, may already hold the bulk of their assets under an existing holding company structure or in a small number of subsidiaries. Accordingly, the Board does not believe that all foreign banking organizations will incur substantial costs in reorganizing their U.S. operations. On the whole, the Board believes that the financial stability benefits of the U.S. intermediate holding company, as discussed above, outweigh the costs of the one-time reorganization.

In order to permit foreign banking organizations to conduct the necessary restructuring in an orderly way, the final rule extends the transition period for forming a U.S. intermediate holding company until July 1, 2016, for foreign banking organizations that meet or exceed the relevant asset threshold on July 1, 2015. Under the final rule, a foreign banking organization that meets or exceeds the threshold for formation of a U.S. intermediate holding company (U.S. non-branch assets of $50 billion) on July 1, 2015, is required to organize its U.S. operations such that most of its U.S. subsidiaries are held by the U.S. intermediate holding company by July 1, 2016. Such a foreign banking organization and its U.S. intermediate holding company must be in compliance with the enhanced prudential standards (other than the leverage ratio and the stress-testing requirements) on that date.

The final rule provides additional transition time for completing the structural reorganization for foreign banking organizations that must form a U.S. intermediate holding company by July 1, 2016. As commenters explained, many foreign banking organizations' operational structures arose through historical acquisitions that may be costly or complicated to reorganize. By July 1, 2016, the U.S. intermediate holding company must hold the foreign banking organization's ownership interest in any U.S. bank holding company subsidiary and any depository institution subsidiary and in U.S. subsidiaries representing 90 percent of the foreign banking organization's assets not held by the bank holding company or depository institution. The final rule provides a foreign banking organization until July 1, 2017, to transfer its ownership interest in any residual U.S. subsidiaries to the U.S. intermediate holding company. This additional accommodation should mitigate some tax and restructuring costs for foreign banking organizations with numerous small nonbank subsidiaries, while ensuring that the majority of a foreign banking organization's U.S. non-branch assets are held by the U.S. intermediate holding company and are subject to enhanced prudential standards, consistent with safety and soundness and mitigation of systemic stability risks by July 1, 2016.

The Board also extended the compliance period for a foreign banking organization that meets or exceeds the threshold for formation of a U.S. intermediate holding company after July 1, 2015. Under the final rule, a foreign banking organization that meets or exceeds the asset threshold after July 1, 2015, would be required to establish a U.S. intermediate holding company beginning on the first day of the ninth quarter after it meets or exceeds the asset threshold, unless that time is accelerated or extended by the Board in writing. These extended transition periods should mitigate the tax and reorganization costs by providing affected foreign banking organizations additional time to plan and execute the required restructuring in the way that most comports with their tax-planning and internal organizational needs.

3. Scope of the Application of the U.S. Intermediate Holding Company Requirement

Commenters also proposed modifications to the application of the U.S. intermediate holding company requirement. For instance, some commenters argued that the Board should impose the U.S. intermediate holding company requirement based on a case-by-case assessment of the immediate or actual risks posed by an individual foreign banking organization or its U.S. operations. In this context, several commenters suggested that foreign banking organizations owned by sovereign wealth funds should be exempt from the requirement to form a U.S. intermediate holding company. By contrast, some commenters argued that a case-by-case determination for a U.S. intermediate holding company would subject foreign banking organizations to too much uncertainty. Others suggested that the Board should create a waiver for or exempt from the U.S. intermediate holding company requirement any foreign banking organization that is able to demonstrate a comparable home country supervisory regime, that has U.S. subsidiaries deemed to be adequately capitalized or managed, or that poses no danger to systemic stability in the United States. Some commenters asserted that the Board should differentiate between the risks posed by foreign banking organizations and should apply stricter requirements to foreign banking organizations with predominantly broker-dealer operations. A number of commenters suggested that the Board raise the asset threshold for the U.S. intermediate holding company requirement, expressing the view that a foreign banking organization should be required to form a U.S. intermediate holding company when its U.S. non-branch assets were equal to or greater than $50 billion, rather than $10 billion.

The Board chose to base the proposed U.S. intermediate holding company requirement on asset size because it is a measure that is objective, transparent, readily available, and comparable among foreign banking organizations. The Board believes that imposing the U.S. intermediate holding company requirement based on a case-by-case assessment of the immediate or actual risks, by the identity of the ultimate shareholder, or by an evaluation of the practices of the home-country regulator would be less transparent for foreign banking organizations and market participants, and would create too much uncertainty. The lack of transparency may limit the ability of foreign banking organizations to anticipate whether they would be subject to the U.S. intermediate holding company requirement in the future and limit their ability to make strategic decisions about their U.S. operations. Furthermore, if the Board were to impose a U.S. intermediate holding company requirement on a case-by-case basis as suggested by commenters, market participants may view the imposition of a U.S. intermediate holding company requirement as a signal that the Board has concerns about a particular foreign banking organization's parent company, U.S. operations, or home-country supervisor, and could cause market participants to limit their exposure to that firm or other firms from that country, thereby increasing stress in the market. In addition, a case-by-case assessment may result in disparate treatment of foreign banking organizations that compete in the same markets. Accordingly, the final rule would base the U.S. intermediate holding company requirement on the size of the firm's U.S. non-branch assets and does not provide for any exemptions or waivers based on the factors described by commenters.

In light of these comments, however, the Board reviewed the proposed $10 billion threshold in light of the applicable considerations under section 165, including the systemic risk posed

by operations of this size and the Board's authority to tailor application of the standards pursuant to section 165(a)(2). Based on its review, the Board has determined that it would be appropriate to raise the threshold in the final rule for the U.S. intermediate holding company requirement from $10 billion to $50 billion of U.S. non-branch assets. This threshold will reduce the burden on a foreign banking organization with a smaller U.S. presence, but will maintain the U.S. intermediate holding company requirement for the larger foreign banking organizations that present greater risks to U.S. financial stability.[99] Moreover, the Board believes that establishing a minimum threshold for forming a U.S. intermediate holding company at $50 billion helps to advance the principle of national treatment and equality of competitive opportunity in the United States by more closely aligning standards applicable to the U.S. non-branch operations of foreign banking organizations under section 165 with the threshold for domestic U.S. bank holding companies that are subject to enhanced prudential standards under Title I of the Dodd-Frank Act.

Some commenters argued that the final rule should exempt foreign banking organizations that do not have a U.S. insured depository subsidiary from the U.S. intermediate holding company requirement. Other commenters expressed concern that the proposal would impose minimum capital requirements for banks or bank holding companies on U.S. intermediate holding companies without subsidiary insured depository institutions. The Board believes that imposing these standards on a foreign bank's U.S. operations is warranted, regardless of whether the foreign bank has a U.S. insured depository institution, and therefore has not adopted this suggested change in the final rule. First, all foreign banking organizations subject to the final rule have banking operations in the United States (either through a U.S. branch or agency, or through a bank holding company subsidiary). Foreign banking organizations that have branches and agencies are treated as if they were bank holding companies for purposes of the Bank Holding Company Act and the Dodd-Frank Act.[100] In addition, by statute, both uninsured and insured U.S. branches and agencies of foreign banks may receive Federal Reserve advances on the same terms and conditions that apply to domestic insured state member banks. The risks to financial stability presented by foreign banking organizations with U.S. branches and agencies generally are not dependent on whether the foreign banking organization has a U.S. insured depository institution. In many cases, insured depository institution subsidiaries of foreign banks form a small percentage of their U.S. assets. Accordingly, the final rule applies the U.S. intermediate holding company requirement to all foreign banking organizations that meet the asset threshold and have a banking presence in the United States, regardless of whether they own a U.S. insured depository institution.[101] The Board notes that a foreign bank that has a banking presence through a U.S. branch or agency (in lieu of or in addition to operating an insured depository institution) would be permitted to continue to operate the branch or agency outside of the U.S. intermediate holding company.

One commenter asserted that the U.S. intermediate holding company requirement should be an alternative to any domestic regulatory-capital surcharge that would be imposed on a U.S. intermediate holding company with a parent that is a global systemically-important bank. The Board is considering the appropriate framework for domestic systemically-important banking organizations, and will consider such comments in connection with any rulemaking relating to domestic systemically-important banking organizations.

4. Method for Calculating the Asset Threshold

Several commenters expressed views on the proposed method for calculating U.S. non-branch assets for purposes of applying the U.S. intermediate holding company requirement. Under the proposal, a foreign banking organization generally would have calculated its U.S. non-branch assets by taking the average of the total consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company) for the previous four quarters. Some commenters argued that foreign banking organizations should be allowed to exclude certain assets from the calculation of total combined U.S. assets, including low-risk assets, such as U.S. government bonds, cash, or U.S. Treasuries; assets of regulated U.S. broker-dealer subsidiaries; high-quality liquid assets; and reserves on deposit at Federal Reserve Banks. Conversely, one commenter suggested that combined U.S. assets should include consideration of off-balance sheet exposures at the U.S. top-tier holding company. As discussed in greater detail in section IV.B.5 of this preamble, commenters also suggested that certain subsidiaries be excluded from the U.S. intermediate holding company requirement and that assets held by these subsidiaries be excluded from the calculation of U.S. non-branch assets.

After considering these comments, the Board has determined to finalize the definition of U.S. non-branch assets largely as proposed. In general, the Board believes that a foreign banking organization should measure its U.S. non-branch assets using a similar methodology to that used by a U.S. bank holding company to measure its total consolidated assets for purposes of section 165. In calculating its total consolidated assets for purposes of the enhanced prudential standards in section 165, a U.S. bank holding company includes all on-balance sheet assets, including those associated with low-risk activities and functionally regulated subsidiaries, and does not include off-balance sheet exposures. Furthermore, the Board believes that a simple approach to the calculation of U.S. non-branch assets is appropriate and will facilitate planning for foreign banking organizations, particularly for those that are near the threshold for formation of a U.S. intermediate holding company. Accordingly, and consistent with the final rule's requirement to move virtually all subsidiaries under the U.S. intermediate holding company, discussed further below, the final rule's definition of U.S. non-branch assets includes all on-balance sheet assets (other than assets held by a section 2(h)(2) company or by a DPC branch subsidiary).

The proposal would have permitted a foreign banking organization to reduce

[99] *See, e.g.* Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Holding Companies With Total Consolidated Assets of $50 billion or More and Nonbank Financial Companies Supervised by the Federal Reserve, 78 FR 52391 (August 23, 2013) (''Larger companies are often more complex companies, with associated risks that play a large role in determining the supervisory resources necessary in relation to that company. The largest companies, because of their increased complexity, risk, and geographic footprints, usually receive more supervisory attention.'').

[100] 12 U.S.C. 3106(a); 12 U.S.C. 5311(a).

[101] The final rule also provides that a top-tier foreign banking organization that is organized in any ''State'' of the United States (including the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands) will not be subject to the requirements applicable to foreign banking organizations. These organizations qualify as bank holding companies under the Bank Holding Company Act, are fully subject to U.S. capital and other regulatory requirements, and thus are subject to the enhanced prudential standards applicable to domestic bank holding companies.

its U.S. non-branch assets by the amount corresponding to any balances and transactions between any U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed. Commenters supported this aspect of the proposal and recommended that the final rule also exclude, for purposes of this calculation, intercompany balances and transactions between U.S. subsidiaries and U.S. branches and agencies, and between the U.S. intermediate holding company's subsidiaries and non-U.S. affiliates.

The final rule requires a foreign banking organization to reduce its U.S. non-branch assets by the amount corresponding to any balances and transactions between any top tier U.S. subsidiaries that would be eliminated in consolidation were a U.S. intermediate holding company already formed. The final rule does not permit a foreign banking organization to reduce its U.S. non-branch assets by the amount corresponding to balances and transactions between U.S. subsidiaries, on the one hand, and branches or agencies or non-U.S. affiliates, on the other. The purpose of netting intercompany balances between U.S. subsidiaries that would be eliminated in consolidation is to mirror, as closely as possible, the assets of the final consolidated U.S. intermediate holding company. As the final rule does not provide for consolidated treatment of branches and agencies or non-U.S. affiliates with the U.S. intermediate holding company, netting would not be appropriate in this context.

5. Formation of the U.S. Intermediate Holding Company

Under the proposal, a foreign banking organization that met the U.S. non-branch asset threshold for U.S. intermediate holding company formation would have been required to hold its interest in any U.S. subsidiary, other than a section 2(h)(2) company, through the U.S. intermediate holding company. The proposal defined the term ''subsidiary'' to include any company directly or indirectly ''controlled'' by another company. The foreign banking organization would have ''control'' of a U.S. company, and thus be required to move that company under the U.S. intermediate holding company, if it (i) directly or indirectly, or acting through one or more other persons, owned, controlled, or had power to vote 25 percent or more of any class of voting securities of the company; (ii) controlled in any manner the election of a majority of the directors or trustees of the company; or (iii) directly or indirectly exercised a controlling influence over the management or policies of the company.[102] The proposal would have provided an exception for U.S. subsidiaries held under section 2(h)(2) of the Bank Holding Company Act. Section 2(h)(2) of the Bank Holding Company Act allows qualifying foreign banking organizations to retain certain interests in foreign commercial firms that conduct business in the United States.[103]

Commenters provided several comments on the use of the Bank Holding Company Act definition of ''control'' for identifying companies to be held under the U.S. intermediate holding company. In addition, commenters suggested other types of subsidiaries that should be excluded from the requirement to transfer U.S. subsidiaries to a U.S. intermediate holding company, and requested clarification regarding the circumstances in which the Board may permit exceptions to the U.S. intermediate holding company requirement. These comments are discussed below.

a. The Definition of ''Control''

First, several commenters argued that the Bank Holding Company Act definition of ''control'' would require a foreign banking organization to hold a broader set of entities through its U.S. intermediate holding company than commenters viewed as necessary to achieve the goals of the proposal. Commenters suggested a variety of alternatives to the Board's use of the Bank Holding Company Act definition, including requesting that the Board adopt a 25 percent threshold (as is used in the resolution plan rule [104]), a tailor-made standard for Title I of the Dodd-Frank Act, a standard under which a foreign banking organization would be required to hold any subsidiary that it ''practically controlled'' through the U.S. intermediate holding company, or a GAAP consolidation standard. Other commenters asserted that the Board should permit an exemption for subsidiaries that are only partially owned, particularly if integrating those subsidiaries into a U.S. intermediate holding company would disrupt their traditional reporting and consolidation structures. Commenters also asserted that a foreign banking organization might not have or be able to obtain sufficient information to determine whether it has direct or indirect control of U.S. companies under the Bank Holding Company Act definition of control.

The Board based its incorporation of the Bank Holding Company Act definition of ''control'' on the Dodd-Frank Act, which incorporates that definition.[105] Moreover, the use of this definition maintains regulatory parity between foreign banking organizations' U.S. operations and U.S. bank holding companies. The Bank Holding Company Act definition of ''control'' does not require a shareholder to have absolute control over management and policies of a banking organization or other company in order to exert a significant amount of control over the management and policies of that organization, or to be exposed to the direct or indirect risks (e.g., reputational risks) incurred by that subsidiary. To the extent that a foreign banking organization is able to exercise such control, the Board believes it is appropriate for the ownership interest in that subsidiary to be held by the U.S. intermediate holding company and subject to the risk-management regime applied to the U.S. intermediate holding company's operations.

As a general matter, although foreign banking organizations expressed concern that they might not be able to determine whether they or any of their subsidiaries own more than 25 percent of or exert a controlling influence over an entity, the Board believes that a foreign banking organization should have that information about its holdings.[106] To the extent that a foreign banking organization needs time to gather this information, the extended transition period, described above in section II.B.2 of the preamble, will enable this due diligence process. With respect to comments requesting that the Board adopt a 25 percent standard or tailor-made standard, the definition of control is based on the Dodd-Frank Act. Moreover, as noted, the Board believes that it is important to maintain parity with bank holding companies in determining which companies are ''subsidiaries.'' The Board understands that the application of the control definition may not be appropriate in all cases, and has provided a mechanism

[102] 12 U.S.C. 1841(a)(2).

[103] In permitting this exception, the Board has taken into account the nonfinancial activities and affiliations of a foreign banking organization. The proposal would have also provided the Board with authority to approve multiple U.S. intermediate holding companies or alternative organizational structures, as further discussed in section IV.B.5 of this preamble.

[104] 12 CFR 243.2.

[105] Section 2 of the Dodd-Frank Act; 12 U.S.C. 5301.

[106] For instance, foreign banking organizations are required to file the Report of Changes in Organizational Structure (Form Y–10) upon the acquisition of control of a nonbanking entity.

for granting exemptions from the requirement in the final rule, as described below.

b. Exemptions for Specific Subsidiaries

Commenters also provided examples of subsidiaries that they asserted should not be required to be held within the U.S. intermediate holding company, including: (1) Subsidiaries that do not pose a material risk to U.S. financial stability, or subsidiaries below a de minimis asset or liability threshold, such as subsidiaries with no more than $1 billion or $10 billion in total consolidated assets; (2) subsidiaries that are fully and unconditionally guaranteed by the parent, conduits for funding, or U.S. subsidiaries of foreign financial subsidiaries; (3) property casualty insurers; (4) investment funds, including registered and unregistered funds under the Investment Company Act of 1940; (5) branch subsidiaries, particularly those that are significantly related to the U.S. branch's operations; (6) investments held in satisfaction of debts previously contracted in good faith (DPC assets); (7) non-U.S. subsidiaries of the foreign banking organization, even if they were held by a U.S. subsidiary; and (8) joint ventures with another foreign banking organization. Commenters asserted that requiring funding subsidiaries, in particular, to be transferred to the U.S. intermediate holding company would increase funding costs for foreign banking organizations. Some commenters also asked the Board to exclude non-U.S. subsidiaries that are consolidated under the U.S. intermediate holding company from U.S. regulations.

As discussed above, the Board is adopting a transparent, objective threshold standard for determining whether a U.S. intermediate holding company is required and which entities must be held by that company. Excluding the subsidiaries described above would be at odds with the transparency and objectivity of the standard, and, furthermore, would limit the extent to which these subsidiaries would be subject to enhanced prudential standards in a manner consistent with U.S. bank holding companies. The Board believes it is necessary for virtually all legal entities incorporated in the United States, including those mentioned above, to be organized under the U.S. intermediate holding company. This will facilitate application of the capital, liquidity, and other enhanced prudential standards to the operations of these subsidiaries, promoting the financial stability goals discussed earlier. Also, as discussed above, one of the aims of the proposal, and of the final rule, is to provide a platform for consistent supervision and regulation of the U.S. operations of a foreign banking organization. The alternatives suggested by commenters would undermine these goals.

Commenters also requested exclusions for merchant banking subsidiaries or U.S. subsidiaries engaged in or holding non-financial assets, such as private equity investments in non-financial assets, or oil and gas and other similar investments from the U.S. intermediate holding company requirement. In the final rule, the Board has also decided not to exclude from the U.S. intermediate holding company requirement such subsidiaries. These types of subsidiaries have historically been included within a consolidated banking organization subject to supervision by the Board.

In response to comments regarding DPC assets, the final rule provides an exemption from the requirement to hold U.S. subsidiaries through the U.S. intermediate holding company for DPC branch subsidiaries, defined as subsidiaries of a U.S. branch or a U.S. agency acquired, or formed to hold assets acquired, in the ordinary course of business and for the sole purpose of securing or collecting debt previously contracted in good faith by that branch or agency. To the extent the liabilities in satisfaction of which such assets are held pertain to the U.S. branch or agency, it is appropriate for the branch or agency to continue holding the assets and dispose of them. Such DPC assets may only be held for a short term (typically two to five years) during which the banking organization (in this case, the branch or agency) must make good-faith efforts to dispose of the assets.[107] Accordingly, the Board does not believe that it is necessary to require foreign banking organizations to transfer such subsidiaries to the U.S. intermediate holding company.

In response to commenters' requests for clarity regarding its approach to non-U.S. subsidiaries of a U.S. intermediate holding company, the Board will apply the enhanced prudential standards to the consolidated operations of a U.S. intermediate holding company, which would include the foreign subsidiaries of a U.S. intermediate holding company.

Commenters also asked whether the foreign banking organization's entire ownership interest in a controlled subsidiary would need to be transferred to the U.S. intermediate holding company, or whether foreign banking organizations could maintain dual ownership of a U.S. subsidiary through the parent and the U.S. intermediate holding company. Commenters asserted that so long as a subsidiary was consolidated with the U.S. intermediate holding company, it should be unnecessary for the foreign banking organization to transfer its minority interest in the U.S. subsidiary to the U.S. intermediate holding company. In the final rule, in response to these comments, the Board is clarifying the types and amount of interests that must be transferred to the U.S. intermediate holding company.

The final rule provides that a foreign banking organization must transfer all of its ownership interests in a U.S. subsidiary (other than a section 2(h)(2) company or DPC branch subsidiary) to the U.S. intermediate holding company, and may not retain any ownership interest in the U.S. subsidiary directly or through other subsidiaries of the foreign banking organization. The Board believes that the U.S. intermediate holding company's role as a consistent platform for supervision, regulation and risk-management could be undermined by allowing multiple ownership structures for U.S. subsidiaries and attendant uncertainties as to the U.S. intermediate holding company's control over the U.S. subsidiaries. The transition periods should mitigate the difficulties a foreign banking organization may experience in transferring its ownership interest in its U.S. subsidiaries to the U.S. intermediate holding company.

c. Alternative Organizational Structures

The proposal would have provided the Board with authority to permit a foreign banking organization to establish multiple U.S. intermediate holding companies or to use an alternative organizational structure to hold its U.S. operations. The proposal expressly provided that the Board would consider exercising this authority when a foreign banking organization controls multiple lower-tier foreign banking organizations that have separate U.S. operations or when, under applicable home country law, the foreign banking organization may not control its U.S. subsidiaries through a single U.S. intermediate holding company. Finally, the proposal would have provided the Board with authority on an exceptional basis to approve a modified U.S. organizational structure based on the foreign banking organization's activities, scope of operations, structure, or similar considerations.

Although commenters supported this aspect of the proposal, they also

[107] *See* 12 CFR 225.140.

requested that the Board clarify the circumstances under which it would permit alternative U.S. intermediate holding company structures. As discussed above, commenters requested that the Board provide an exception to a foreign banking organization to the extent that the foreign banking organization does not have sufficient control to cause a U.S. subsidiary to be made a subsidiary of its intermediate holding company. Other commenters suggested that the Board permit certain foreign banking organizations, such as holding companies with multiple, separate banking operations in the United States, to form multiple U.S. intermediate holding companies depending on the global entity's structure or other considerations. Commenters cited a variety of potential justifications for multiple U.S. intermediate holding companies, such as limiting disruption of existing businesses, restructuring costs, or tax considerations. Some commenters asked that they be allowed to designate a lower-tier entity as the U.S. intermediate holding company in order to avoid restructuring costs. Others argued that the Board should allow a foreign banking organization with a subsidiary insured depository institution to form separate U.S. intermediate holding companies above bank and nonbank operations, and not apply capital standards to the U.S. intermediate holding company with nonbank operations.

The final rule provides that the Board may permit alternate or multiple U.S. intermediate holding company structures. In determining whether to permit an alternate structure, the final rule provides that the Board may consider whether applicable home country law would prevent the foreign banking organization from controlling its U.S. subsidiaries through a single U.S. intermediate holding company, or where the activities, scope of operations, or structure of the foreign banking organization's subsidiaries in the United States warrant consideration of alternative structures, such as where a foreign banking organization controls multiple lower-tier foreign banking organizations that have separate U.S. operations. If it authorizes the formation of more than one intermediate holding company by a foreign banking organization, the Board generally will treat any additional U.S. intermediate holding company as a U.S. intermediate holding company with $50 billion or more in total consolidated assets, even if its assets are below that threshold. In the narrow circumstance where the Board permits a foreign banking organization to hold its interest in a U.S. subsidiary outside of a U.S. intermediate holding company (for instance, where a foreign banking organization demonstrates that it cannot transfer its ownership interest in the subsidiary to the U.S. intermediate holding company or otherwise restructure its investment), the Board expects to require passivity commitments or other supervisory agreements to limit the exposure to and transactions between the U.S. intermediate holding company and the U.S. subsidiary that remains outside of the U.S. intermediate holding company.

With respect to requests that the Board permit a company to designate a lower-tier subsidiary as the U.S. intermediate holding company or permit multiple U.S. intermediate holding companies over different types of functionally regulated subsidiaries, the Board does not expect to permit an alternative structure where the purpose or primary effect of the alternate structure is to reduce the impact of the Board's regulatory capital rules or other prudential requirements. Thus, the Board would be unlikely to permit a foreign banking organization to form a separate U.S. intermediate holding company for the sole purpose of holding a nonbank subsidiary separate from the banking operations, other than under circumstances of the types noted above, or to designate a company that is not the top-tier company in the United States as the U.S. intermediate holding company.

d. Corporate Form, Designation of Existing Company, and Dissolution of the U.S. Intermediate Holding Company

The proposal would have required a U.S. intermediate holding company to be organized under the laws of the United States, any of the fifty states of the United States, or the District of Columbia. While the proposal generally would have provided flexibility in the corporate form of the U.S. intermediate holding company, the U.S. intermediate holding company could not be structured in a manner that would prevent it from meeting the requirements in the proposal. In addition, the U.S. intermediate holding company would have been required to have a board of directors or equivalent thereto to help ensure a strong, centralized corporate governance system.

Commenters generally supported the flexibility provided in the proposal, but also requested that the Board permit the U.S. intermediate holding company to be a foreign legal entity. Some commenters asked the Board to clarify who might be permitted to sit on the board of directors of the U.S. intermediate holding company, observing that state law may govern citizenship requirements for members of the board of directors.

In the final rule, the Board has retained the flexibility for U.S. intermediate holding companies to choose a corporate form, provided that the U.S. intermediate holding company is organized under the laws of the United States, any of the fifty states thereof, or the District of Columbia. The final rule does not permit the U.S. intermediate holding company to be a foreign legal entity, as this would limit the Board's ability to supervise the U.S. operations of a foreign banking organization in a manner similar to the operations of a U.S. bank holding company and therefore could complicate application of the enhanced prudential standards. To the extent that state law affects the membership of the board of directors, the U.S. intermediate holding company will need to be in compliance with the law of the state in which it is chartered. In addition, as discussed in section IV.D.2 of this preamble, a U.S. intermediate holding company must establish and maintain a risk committee to oversee the risks of its operations.

Several commenters observed that the requirement to form a U.S. intermediate holding company could disrupt the existing capitalization structure of a foreign banking organization's U.S. operations. Among other things, commenters asked the Board to clarify whether a foreign banking organization would be required to form a new holding company or whether it could instead designate an existing company as the U.S. intermediate holding company. One of these commenters requested that the Board allow a newly-formed top-tier U.S. intermediate holding company to include in common equity tier 1 minority interest any minority interest arising from the issuance of common shares by the subsidiary bank holding company.

The final rule clarifies that a foreign banking organization may designate an existing entity as the U.S. intermediate holding company, provided that that entity is the top-tier entity in the United States. While the final rule does not provide that a bank holding company subsidiary could be treated as a depository institution for purposes of the recognition of minority interest, a foreign banking organization that has a bank holding company subsidiary can designate that bank holding company as its U.S. intermediate holding company. Doing so would allow the foreign

banking organization to use the bank holding company's existing capital as the U.S. intermediate holding company's capital, which should address some of the concerns regarding inclusion of minority interests in capital. The Board also has discretion during the transition period to address particular and idiosyncratic issues that may arise in connection with a foreign banking organization's reorganization.

Commenters also requested clarification on whether a foreign banking organization required to form a U.S. intermediate holding company would need to maintain the U.S. intermediate holding company if its assets fall below the applicable threshold. In response to this comment, the Board is clarifying that a foreign banking organization may dissolve the U.S. intermediate holding company if its U.S. non-branch assets fall below the $50 billion threshold for four consecutive quarters. If the foreign banking organization's U.S. non-branch assets were, subsequently, to exceed the $50 billion threshold for four consecutive quarters, the foreign banking organization would be required to re-form its U.S. intermediate holding company and hold its entire ownership interest in such subsidiaries through the U.S. intermediate holding company. If the foreign banking organization retains an entity that is a bank holding company, that bank holding company would be subject to certain of the enhanced prudential standards if it had over $10 billion in assets, such as risk-management standards and stress testing standards applicable to domestic bank holding companies.

Consistent with the proposal, the final rule generally does not require a foreign banking organization to transfer assets held through a U.S. branch or agency to the U.S. intermediate holding company. However, subsidiaries of branches and agencies, other than DPC branch subsidiaries, are required to be transferred to the U.S. intermediate holding company. Some commenters expressed concerns that foreign banking organizations might attempt to relocate risky activities from the U.S. intermediate holding company to a U.S. branch or agency. The Board intends to monitor how foreign banking organizations adapt their operations in response to the U.S. intermediate holding company requirement, including whether foreign banking organizations relocate activities from U.S. subsidiaries into their U.S. branches and agencies.

e. Implementation Plan

The proposal would have required a foreign banking organization to notify the Board after it had formed its U.S. intermediate holding company. Commenters generally supported this requirement, but a number of commenters requested that the Board clarify the process for forming a U.S. intermediate holding company and transferring U.S. subsidiaries to that company.

The final rule does not prescribe a process by which a foreign banking organization must complete the required transfer of ownership to the U.S. intermediate holding company by the date set forth in the final rule. In response to commenters requesting guidance on the process that the Board envisions for transferring ownership interests to the U.S. intermediate holding company, the final rule includes the requirement that a foreign banking organization submit an implementation plan outlining its proposed process to come into compliance with the final rule's requirements. Requiring an implementation plan will facilitate dialogue between the organization and the Federal Reserve early in the process to help ensure that the plan is consistent with the transition period and the Board's expectations for compliance.

A foreign banking organization's implementation plan must contain a list of its U.S. subsidiaries and more detailed information relating to U.S. subsidiaries either that the foreign banking organization is not required to hold through its U.S. intermediate holding company (i.e., section 2(h)(2) companies or DPC branch subsidiaries) or for which the foreign banking organization intends to seek an exemption from the U.S. intermediate holding company requirement. The implementation plan must also contain a projected timeline for the transfer by the foreign banking organization of its ownership interest in U.S. subsidiaries to the U.S. intermediate holding company, a timeline of all planned capital actions or strategies for capital accumulation that will facilitate the U.S. intermediate holding company's compliance with the risk-based and leverage capital requirements, and quarterly pro forma financial statements for the U.S. intermediate holding company covering the period from January 1, 2015 to January 1, 2018. In addition, the implementation plan must include a description of the risk management and liquidity stress testing practices of the foreign banking organization, and a description of how the foreign banking organization intends to come into compliance with those requirements. Through the supervisory process, the Board may request that a foreign banking organization include additional information in its implementation plan. A foreign banking organization is not required to file routine updates to its implementation plan; however, the foreign banking organization should notify the Board if it anticipates that it will deviate materially from the plan.

The implementation plan must be submitted on or before January 1, 2015, from each foreign banking organization that has U.S. non-branch assets of $50 billion or more as of June 30, 2014. The Board acknowledges, however, that a foreign banking organization that is above the threshold on that date may try to reduce its U.S. non-branch assets prior to the date on which it would be required to form a U.S. intermediate holding company. In such case, the implementation plan would be required to contain a description of the foreign banking organization's plan for reducing its U.S. non-branch assets below $50 billion for four consecutive quarters prior to July 1, 2016, consistent with safety and soundness. The Board may also require an implementation plan from a foreign banking organization that meets or exceeds the threshold for formation of a U.S. intermediate holding company after June 30, 2014, if the Board determines that an implementation plan is appropriate for that foreign banking organization. The Board would expect to evaluate all implementation plans, including those expressing the intent to reduce assets, for reasonableness and achievability.

Two commenters requested that the Board consider waivers of section 23A of the Federal Reserve Act for institutions subject to the proposal in order to facilitate transfers to the U.S. intermediate holding company. The final rule is not the appropriate vehicle in which to grant or deny such waivers. Any request for a waiver will be considered under the processes set forth in section 23A of the Federal Reserve Act, which require notice and non-objection from the FDIC.[108] The Board expects that companies will identify instances in which such waivers may be necessary in connection with their implementation plans.

[108] 12 U.S.C. 371c.

f. Interaction of the U.S. Intermediate Holding Company Requirement With Other Regulatory Requirements

i. Other Regulatory Regimes

Commenters also requested clarification about the interaction between the proposal and the rules proposed by the Commodity Futures Trading Commission (CFTC) under section 710 of the Dodd-Frank Act. The Board has brought the comment to the attention of the CFTC for consideration in their rulemaking process, which is still ongoing.

ii. Source of Strength

Commenters asked whether the Board expects a U.S. intermediate holding company to serve as a source of strength for its subsidiaries that are not insured depository institutions. The Board is clarifying that the final rule does not require a U.S. intermediate holding company to serve as a source of strength for its subsidiaries that are not insured depository institutions. The final rule does not affect any other source of strength obligations that would otherwise apply to the U.S. intermediate holding company.[109]

iii. ''Fed Lite'' Provisions of the Bank Holding Company Act

Section 5(c)(3) of the Bank Holding Company Act, commonly known as the ''Fed lite'' provision, prohibits the Board from imposing ''rules, guidelines, standards, or requirements on any functionally regulated subsidiary of a bank holding company.'' [110] Commenters argued that the U.S. intermediate holding company requirement was inconsistent with these provisions. In support of their argument, they described the U.S. intermediate holding company requirement as ''targeted'' towards imposing capital requirements on broker-dealer affiliates of foreign banking organizations, and asserted that the proposal is the equivalent of doing indirectly what the Board cannot do directly. These commenters also asserted that the proposal would impose additional regulatory burdens on broker-dealers owned by foreign banking organizations compared to stand-alone domestic broker-dealers, and thereby would violate national treatment.

The final rule applies to the U.S. operations of all foreign banking organizations, regardless of whether they have significant broker-dealer activities, and requires a foreign banking organization to place all U.S. subsidiaries (other than section 2(h)(2) companies and DPC branch subsidiaries) under a U.S. intermediate holding company, regardless of the type of subsidiary. Accordingly, U.S. intermediate holding companies will have a range of functionally regulated subsidiaries, including broker-dealers, insurance companies, and insured depository institutions, and some may have larger functionally regulated subsidiaries than others. The final rule imposes rules on the U.S. intermediate holding company, not on functionally regulated subsidiaries of the foreign banking organization, in the same way that those rules are applied to domestic bank holding companies, including those with significant broker-dealer activities. Accordingly, the rule does not target foreign banking organizations with broker-dealer activities.

Under section 165(b)(4), the Board is required to consult with the primary financial regulator of a functionally regulated subsidiary before imposing any prudential requirements under section 165 that are likely to have a significant impact on that functionally regulated subsidiary. The Board consulted with the relevant primary financial regulators, including the SEC, the OCC, the CFTC, and the FDIC in establishing the U.S. intermediate holding company requirement, thus satisfying its statutory obligation. More generally, and consistent with its current practice, the Board intends to coordinate with functional regulators in the ordinary course of supervising compliance with the enhanced prudential standards.

Last, the Board notes that the final rule applies only to those foreign banking organizations that have a banking presence, such as a branch or an agency, in the United States. Accordingly, the broker-dealer subsidiaries of those foreign banking organizations are not similarly situated to stand-alone broker-dealers or broker-dealers owned by foreign banks without a U.S. banking presence. Foreign banking organizations with a banking presence in the United States are subject to regulation by the Board, whereas those other entities are not.

6. Virtual U.S. Intermediate Holding Company

A few commenters suggested that in order to mitigate the costs of the proposal, rather than requiring formation of a U.S. intermediate holding company, the Board should permit a ''virtual'' U.S. intermediate holding company. According to the commenters, a foreign banking organization opting to adopt a virtual U.S. intermediate holding company structure would calculate, measure and report its capital and liquidity as if its U.S. subsidiaries were consolidated under a U.S. intermediate holding company, and would be subject to examination and safety and soundness review, but no intermediate holding company would actually exist, and no reorganization would therefore be necessary. If needed, additional capital or liquidity would be provided to one or more of the foreign banking organization's major U.S. subsidiaries. The commenters argued that the subsidiaries could be resolved if necessary. Some commenters suggested that the ''virtual'' U.S. intermediate holding company house all U.S. subsidiaries of the foreign banking organization, while others suggested that the ''virtual'' intermediate holding company house only the systemically-significant nonbank U.S.-based subsidiaries of the foreign banking organization.

As discussed in the proposal, and as described further above, the wide variety of foreign banking organization structures and operations make it difficult to consistently apply enhanced prudential standards to foreign banking organizations' U.S. operations using a virtual U.S. intermediate holding company approach. However, the final rule would not permit an institution to form a ''virtual'' U.S. intermediate holding company. A virtual U.S. intermediate holding company would retain a fractured organizational structure that can reduce the effectiveness of attempts of the foreign banking organization to manage the risks of its U.S. operations. It also would not enable the Board to apply the enhanced prudential standards transparently and consistently across the U.S. operations of foreign banking organizations, hindering achievement of the policy goals and implementation of section 165 of the Dodd-Frank Act.

The Board believes that a ''virtual'' U.S. intermediate holding company would not provide a consistent platform for supervision and regulation comparable to a U.S. intermediate holding company. For example, determining the appropriate risk management structure and the location of capital and liquidity for a ''virtual'' U.S. intermediate holding company would require a case-by-case supervisory assessment, which, as described above, would not address the risks that foreign banking organizations with $50 billion in U.S. non-branch assets pose to U.S. financial stability. In addition, the ''virtual'' U.S. intermediate holding company would not have a centralized risk function, which would

[109] *See, e.g.,* 12 U.S.C. 1831o–1.

[110] 12 U.S.C. 1844(c)(3).

hinder risk management at the U.S. intermediate holding company.

Last, the Board believes that a virtual structure would also not materially enhance the ability to resolve the U.S. operations of a foreign banking organization. Given the substantial uncertainty surrounding the operational challenges of a ''virtual'' U.S. intermediate holding company, and attendant concerns regarding whether the ''virtual'' U.S. intermediate holding company can effectively mitigate the systemic risk posed by a foreign banking organization with more than $50 billion in U.S. non-branch assets, the Board is not permitting foreign banking organizations to comply with the final rule by using a ''virtual'' U.S. intermediate holding company.

7. Transitional Application of the Enhanced Prudential Standards to a Bank Holding Company That Is a Subsidiary of a Foreign Banking Organization

The proposed rule provided that a U.S. intermediate holding company that was a bank holding company would be subject to the enhanced prudential standards applicable to U.S. intermediate holding companies and not to the standards applicable to U.S. bank holding companies, regardless of whether the company had total consolidated assets of $50 billion or more. The final rule adopts the approach set forth in the proposed rule. It further clarifies that, prior to the formation of the U.S. intermediate holding company, a bank holding company with total consolidated assets of $50 billion or more controlled by a foreign banking organization is subject to the enhanced prudential standards applicable to bank holding companies that are contained in this final rule beginning on January 1, 2015 and ending on the date on which the U.S. intermediate holding company formed or designated by the parent foreign banking organization becomes subject to parallel requirements under the foreign final rule.

As discussed below in sections IV.C.1 and IV.F.1 of this preamble, the final rule generally delays the application of the leverage capital requirements and stress test requirements to the U.S. intermediate holding company until January 1, 2018 and October 1, 2017, respectively. The final rule clarifies that each subsidiary bank holding company and insured depository institution of a foreign banking organization must continue to comply with the applicable leverage requirements under the Board's Regulation Q (12 CFR Part 217) and stress testing requirements under subparts F, G, or H of Regulation YY, as applicable, until the U.S. intermediate holding company becomes subject to those requirements under the final rule. If the foreign banking organization designated an existing bank holding company as its U.S. intermediate holding company, that bank holding company would continue to be subject to capital requirements under 12 CFR Part 217 until December 31, 2017, and stress test requirements under subparts F, G, or H of Regulation YY until September 30, 2017.

The Board may accelerate the application of the leverage and stress testing requirements to a U.S. intermediate holding company if it determines that the foreign banking organization has taken actions to evade the application of this subpart. Actions to evade application of the subpart would include, for instance, the transfer of assets from a bank holding company subsidiary to the U.S. intermediate holding company in order to minimize application of the leverage requirements prior to January 1, 2018.

The final rule also includes a reservation of authority for the Board to modify application of the enhanced prudential standards during the transition period if appropriate to accommodate the organizational structure of a foreign banking organization or characteristics specific to such foreign banking organization and the modification is appropriate and consistent with the capital structure, size, complexity, risk profile, scope of operations, or financial condition of the U.S. intermediate holding company, safety and soundness, and the financial stability mandate of section 165 of the Dodd-Frank Act. As foreign banking organizations engage in the restructuring necessary to come into compliance with the final rule, the Board retains the authority to address idiosyncratic issues and discontinuities arising out of the application of the enhanced prudential standards to the U.S. operations. For example, the Board could use this authority where a temporary location for capital would significantly reduce capital at a holding company through application of the minority interest rules.

C. Capital Requirements

Section 165(b) of the Dodd-Frank Act requires the Board to impose enhanced risk-based and leverage capital requirements on foreign banking organizations with $50 billion or more of total consolidated assets. The proposal would have required a U.S. intermediate holding company, including a U.S. intermediate holding company that does not have a subsidiary depository institution, to comply with the Board's risk-based and leverage capital requirements as if it were a bank holding company. The proposal would also have applied the Board's capital plan rule to U.S. intermediate holding companies with total consolidated assets of $50 billion or more in light of the more significant risks posed by these firms. The proposal would have required a foreign banking organization with total consolidated assets of $50 billion or more to certify or otherwise demonstrate to the Board's satisfaction that it meets capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework.

As discussed below, the final rule would adopt the proposal largely as proposed, but in order to reduce burden on U.S. intermediate holding companies that meet the thresholds for application of the advanced approaches risk-based capital rules (the advanced approaches rules), the final rule would provide that such U.S. intermediate holding companies do not have to comply with the advanced approaches rules, even where the U.S. intermediate holding company is a bank holding company.

1. Risk-Based and Leverage Capital Requirements Applicable to U.S. Intermediate Holding Companies

The proposal would have applied the Board's risk-based and leverage capital rules to the U.S. intermediate holding company. Thus, under the proposal (following implementation of the revised capital framework), the U.S. intermediate holding company would have been required to meet a minimum common equity tier 1 risk-based capital requirement of 4.5 percent, a minimum tier 1 risk-based capital requirement of 6 percent, a total risk-based capital requirement of 8 percent, and a minimum leverage ratio of tier 1 capital to average total consolidated assets of 4 percent (the generally-applicable leverage ratio). In addition, U.S. intermediate holding companies with total consolidated assets of $250 billion or more or on-balance sheet foreign exposure equal to $10 billion or more would have been required to meet a minimum supplementary leverage ratio, which takes into account off-balance sheet exposures, of 3 percent. The U.S. intermediate holding company would have been subject to the capital conservation buffer, and, if applicable, the countercyclical capital buffer, which would limit the U.S. intermediate holding company's ability to make capital distributions and certain discretionary bonus payments if it did

not hold a specified amount of common equity tier 1 capital in excess of the amount necessary to meet its minimum risk-based capital requirements. As the U.S. intermediate holding company would consolidate the U.S. subsidiaries of the foreign banking organization, the U.S. intermediate holding company would have been required to comply with these requirements based on the exposures and capital of its U.S. subsidiaries (and the subsidiaries thereof).

a. Comments on Capital Requirements for the U.S. Intermediate Holding Company

1. U.S. Financial Markets and U.S. Financial Stability

The risk-based and leverage capital requirements proposed to apply to U.S. intermediate holding companies were intended to strengthen the capital position of U.S. operations of foreign banking organizations in furtherance of section 165's financial stability mandate. However, commenters expressed concern that the proposal would instead have negative effects on U.S. financial markets and U.S. financial stability. Commenters asserted that the requirements would create incentives for foreign banking organizations to reduce their U.S. activities, particularly repo activities. According to commenters, foreign banking organizations, particularly smaller firms dominated by broker-dealer operations, would reduce assets to avoid requirements, and firms would reconsider any strategies to expand in the United States. In the view of these commenters, these assets and activities would shift to U.S. bank holding companies and unregulated institutions, concentrating financial assets and activities in fewer entities and increasing systemic instability. Commenters also asserted that the proposed leverage capital requirements would penalize firms with low-risk assets and create incentives for foreign banking organizations to increase the riskiness of their balance sheets.

Many of these comments rest on implicit assumptions about the costs of the proposed capital requirements and assume that a foreign banking organization would choose to reduce its activities rather than comply with the requirements under the final rule. Some foreign banking organizations, however, will be able to meet the new U.S. intermediate holding company capital requirements by retaining more earnings in their U.S. operations or by contributing equity capital held at the parent to the U.S. intermediate holding company without having to do an external capital raise.

In addition, commenters' arguments that the proposal would increase systemic instability by increasing concentration among U.S. bank holding companies fail to account for the broader changes in the regulatory environment in which the foreign banking organizations and their U.S. competitors operate. The Board has made a number of enhancements to its regulation and supervision of bank holding companies and foreign banking organizations in the years following the financial crisis. As a result of these enhancements and the final rule, U.S. bank holding companies with consolidated assets of $50 billion or more are subject to enhanced prudential standards parallel to those applied to U.S. intermediate holding companies, thus balancing the effect of the foreign proposal on competition and concentration of activities among domestic and foreign banking organizations. With respect to commenters' assertions that foreign banking organizations will reduce their activities in response to the final rule, the Board believes, on balance, that if a large foreign banking organization or a domestic bank holding company were to reduce its systemic footprint in response to the final rule, this would be consistent with the Board's overall goal of financial stability.

In response to commenters' assertions that the final rule will concentrate activities in unregulated financial institutions, the Board will continue to monitor the migration of risk from the regulated banking system to unregulated entities, and to inform its policy decisions with the results of its monitoring.

Some commenters asserted that the proposed requirements for both U.S. bank holding companies and U.S. intermediate holding companies were too low, and should be strengthened. The Board notes that the final rule is one component of the Board's comprehensive reforms to improve the resiliency of large U.S. banking organizations and the U.S. operations of foreign banking organizations and systemic stability, and should be considered in the context of those comprehensive reforms. More generally, the Board continues to review requirements and consider policy actions as necessary to address emerging risks.

2. Consolidated Capital at the Parent and Parent Support

Multiple commenters asserted that the Board should rely on the capital adequacy of the foreign banking organization and not impose capital requirements separately on the U.S. intermediate holding company. Commenters argued that a foreign banking organization would in practice support its operations in the United States to avoid the reputational and legal consequences of permitting a subsidiary in a host jurisdiction to fail. Commenters noted that European banks provided funding to their U.S. operations during the Eurozone crisis of 2011 as an example of such support. Commenters also opined that the proposal could accelerate withdrawal of foreign banking organizations from U.S. markets in the event of a home-country crisis, because it would be hard for such entities to justify maintaining capital and liquidity in the United States.

The Board agrees with commenters that the financial strength of the foreign bank parent, and its reputation, are important to that institution's ability to support its U.S. operations. The final rule takes this into account by allowing foreign banks to continue to operate in the United States through branches on the basis of the capital of the foreign bank parent. The Board does not believe, however, that it is appropriate to rely solely on the expectation that a foreign banking organization would support its U.S. operations in order to protect the financial stability of the United States. Even if the foreign bank parent is financially strong in stable times, multiple factors may limit its ability to support its U.S. operations during a period of stress. For example, as the proposal observed, home country political and legal developments may hamper a foreign bank parent's ability to support its offshore affiliates. While foreign banks have strong business and reputational incentives to support their U.S. operations, to the extent that the U.S. operations of a foreign banking organization depend on parent support and the parent foreign banking organization experiences financial or other stress, foreign banking organizations and their home-country supervisors may be forced to choose between the costs involved in supporting U.S. operations and the implications for home country operations. Having considered these risks to U.S. financial stability and the Dodd-Frank Act's mandate to impose enhanced prudential standards, including enhanced risk-based and leverage capital requirements, on foreign banking organizations, the Board believes it is appropriate to impose capital requirements on U.S. intermediate holding companies.

Commenters also argued that the proposal did not give adequate regard to the principles of national treatment, as required by the Dodd-Frank Act, because it would have subjected foreign banking organizations to what they described as more stringent capital requirements than their U.S. counterparts. Commenters alleged that under the proposal, foreign banking organizations would receive no credit for capital that may be held in entities outside the United States that could otherwise offset the Board's capital requirements. Some commenters asserted that the U.S. operations of foreign banking organizations could appear riskier on a stand-alone basis than they would if considered as part of the consolidated entity.

The final rule permits U.S. branches and agencies of foreign banks to continue to operate on the basis of the foreign bank's capital and does not impose capital or stress testing requirements on U.S. branches and agencies of foreign banking organizations. Therefore, the final rule does give credit to foreign banking organizations for capital held at the foreign banking organization because it relies on a home country's implementation of the Basel Capital Framework in evaluating the capital adequacy of the foreign banking organization. As discussed above, notwithstanding capital adequacy at the parent, however, the Board believes that it is appropriate for the U.S. intermediate holding company to meet capital adequacy standards in the United States separately from the parent foreign bank.

Commenters also argued that the proposed requirements would be disruptive to the consolidated entity and would hamper its ability to support its global operations. These commenters criticized the application of risk-based and leverage capital requirements to the U.S. intermediate holding company. They argued not only that the requirements would prevent centralized resource management throughout the organization, consistent with comments described above in section IV.A.4 of this preamble, but also that the proposal would effectively and inappropriately raise capital requirements on parent foreign banking organizations. Specifically, some commenters asserted that some home-country regulation or supervisors would reflect the ''trapping'' of capital in the United States by requiring those firms to meet higher stand-alone parent capital requirements, or excluding from the parent's regulatory capital any capital held in the United States. In either case, commenters asserted that the proposal would require foreign banking organizations to raise additional capital at the parent, which commenters asserted would effectively impose home country capital requirements in excess of that required by a home-country's implementation of the Basel Capital Framework. Commenters also argued that home-country regulations limiting the recognition of minority interest in parent capital would create disincentives for foreign banking organizations to capitalize their U.S. intermediate holding companies through the sale of equity interests in the U.S. intermediate holding companies to third parties.

The Board acknowledges that some home-country regulation may require a foreign banking organization that contributes capital to its U.S. intermediate holding company or raises capital through sales of equity in the U.S. intermediate holding company to reduce its capital for purposes of its parent-only or consolidated capital calculations. In these cases, the parent may be required to raise additional capital. However, even in these instances, the Board believes that it is important for a U.S. intermediate holding company to hold capital in the United States. To the extent that home country regulations limit a foreign banking organization's ability to rely on capital held in the United States in calculating consolidated or parent-only capital, the Board would be concerned that the foreign banking organization might not be able to downstream adequate capital to its U.S. operations during a time of significant stress because it could be considered undercapitalized under its home-country regime. The Board therefore believes that requiring the foreign banking organization to position capital at its U.S. intermediate holding company is appropriate to protect U.S. financial stability.

However, to mitigate transitional costs for foreign banking organizations and the U.S. economy that may occur from the capital requirements and other aspects of the final rule, the final rule generally extends the initial compliance date for foreign banking organizations from July 1, 2015, to July 1, 2016. Furthermore, the leverage ratios of the final rule will not become applicable to the U.S. intermediate holding company until January 1, 2018.[111] This transition period should help foreign banking organizations manage the costs of moving capital to the United States, and therefore should mitigate the impact that capital requirements might otherwise have on foreign banking organizations' U.S. activities.

Other commenters contended that even if, in the final rule, the Board determined not to rely on the adequacy of the parent's consolidated capital position, the Board should still modify its requirements to recognize types of capital instruments for the U.S. intermediate holding company which are in addition to those recognized in the Board's revised capital framework. Specifically, the commenters suggested that the Board should allow the U.S. intermediate holding company to count as capital instruments representing claims on the parent, including contingent capital, keepwell agreements, debt, and parent guarantees. These commenters suggested that the Board recognize these instruments on the grounds that the U.S. intermediate holding company would differ from a U.S. bank holding company in the ways it would raise capital and that it would be adequately supported by the parent through these types of instruments and agreements.

The final rule does not recognize alternative forms of capital that do not meet the criteria for capital instruments under the Board's capital rules for bank holding companies. First, the types of capital instruments that the Board recognizes in its revised capital framework are those that provide sufficient loss-absorbency at times of stress. The Board is concerned that the instruments cited by the commenters are not similarly loss-absorbent and may be contingent forms of capital support that could be curtailed if both the U.S. and the home-country operations experienced simultaneous stress. Furthermore, requiring the same types of capital instruments for U.S. intermediate holding companies and U.S. bank holding companies is consistent with national treatment and equality of competitive opportunity.

b. Comments on Applying Capital Regulations at a Sub-Consolidated Level

1. Burdens and Costs of Multiple Systems

Commenters also criticized the Board for requiring the U.S. intermediate holding company to calculate its risk-based and leverage capital requirements as a stand-alone entity. Commenters focused on the implementation and

[111] The final rule also provides that a subsidiary bank holding company or insured depository institution prior to formation of the U.S. intermediate holding company must continue to comply with the leverage capital requirements applied to that bank holding company or insured depository institution under the Board's Regulation Q (12 CFR Part 217) until December 31, 2017.

compliance burden of the multiple capital calculations required for foreign banking organizations, asserting that they would have to create costly and redundant systems for complying with multiple sets of local rules. These commenters asserted that requiring compliance with the home-country advanced approaches rule (as applicable), home-country Basel I rules, U.S. advanced approaches rules (as applicable), and the U.S. standardized approach was burdensome and unnecessary for systemic stability. In particular, commenters cited the need to create additional models for compliance with the U.S. advanced approaches rules that would be different from and inconsistent with home-country models. Several commenters asked the Board to clarify whether the foreign exposures test for application of the advanced approaches rules would apply to a U.S. intermediate holding company.

In response to commenters' concerns regarding the burdens of implementing the U.S. advanced approaches rules, the Board has determined that the U.S. intermediate holding company will not be subject to the advanced approaches rules, even if the U.S. intermediate holding company meets the thresholds for application of those rules. This exemption also applies to a U.S. intermediate holding company that is a bank holding company. A bank holding company subsidiary of a foreign banking organization that is subject to the advanced approaches rules may opt out of complying with the U.S. advanced approaches rules with the Board's prior approval.[112] This modification responds to comments about both duplicative model-based calculations required for the U.S. intermediate holding company and whether a U.S. intermediate holding company would have sufficient foreign exposures to require application of the advanced approaches rules. The capital adequacy of a U.S. intermediate holding company will be addressed by standardized risk-based capital rules, leverage rules, and capital planning and supervisory stress testing requirements.

A U.S. intermediate holding company that meets the threshold for the advanced approaches rules will, nonetheless, be subject to the other requirements that apply to advanced approaches banking organizations, including restrictions on distributions and discretionary bonus payments associated with the countercyclical capital buffer, the supplementary leverage ratio provided for in subpart B of the revised capital framework, and the requirement to include accumulated other comprehensive income in regulatory capital.[113] These are aspects of the revised capital framework that apply to institutions that meet the thresholds for application of the advanced approaches rules, but are not part of the advanced approaches rules. The final rule does not, however, require a U.S. intermediate holding company that meets the threshold for application of the advanced approaches rules to deduct from common equity tier 1 or tier 1 capital its expected credit loss that exceeds eligible credit reserves, because the U.S. intermediate holding company would be subject to the standardized approach set forth in the revised capital framework, and that deduction is associated with the advanced approaches risk-based capital requirements. In addition, a bank holding company that is a subsidiary of a foreign banking organization and that currently is subject to the advanced approaches rules may, with the Board's prior written approval, elect not to comply with the advanced approaches rules.

Finally, with respect to commenters' concerns about requiring jurisdiction-specific systems for complying with local rules, as noted above, consistent with the Basel Capital Framework, multiple jurisdictions apply host-country regulation to the locally incorporated subsidiaries of global banking organizations. Maintaining operations in multiple jurisdictions may therefore require a foreign banking organization to create systems that take into account different regulatory regimes and approaches. The U.S. intermediate holding company requirement, with its attendant risk-based and leverage capital requirements, applies only to those institutions with $50 billion or more in U.S. non-branch assets, which are institutions that are large and sophisticated and capable of implementing such systems. In addition, the enhanced prudential standards rely on the Basel Capital Framework, with which the foreign banking organizations subject to the final rule should already be familiar.

2. Applying the Leverage Ratio to the U.S. Intermediate Holding Company

Commenters expressed concerns about the burdens of complying with both U.S. and home-country leverage requirements, asserting that inconsistencies among the standards would force U.S. intermediate holding companies to manage to the stricter requirement. Many commenters criticized application of the generally-applicable leverage ratio of 4 percent to a U.S. intermediate holding company prior to adoption of the international leverage ratio provided for in Basel III (the Basel III leverage ratio).[114] Other commenters argued that the requirement would result in extraterritorial application of the Board's rules, and asserted that having a single global leverage ratio would be preferable to having multiple local leverage ratios.

Consistent with the principle of national treatment, the final rule imposes the same leverage capital requirements on U.S. intermediate holding companies as it does on U.S. bank holding companies. These leverage capital requirements include the generally-applicable leverage ratio and the supplementary leverage ratio for U.S. intermediate holding companies that meet the scope of application for that ratio. These requirements do not result in extraterritorial application of the Board's rules, because the final rule applies the leverage ratios only to the U.S. operations of the foreign banking organization, and not to the foreign banking organization parent. The Board has longstanding experience with leverage measures as complements to risk-based capital measures. From a safety-and-soundness perspective, each type of requirement offsets potential weaknesses of the other, and the two sets of requirements working together are more effective than either would be in isolation. The Board believes that requiring the U.S. intermediate holding company to meet these ratios, as applicable, on the basis of its U.S. capital and exposures will strengthen the U.S. intermediate holding company's capital position in the same way that it strengthens the capital position of U.S. bank holding

[112] U.S. intermediate holding companies may, however, elect to comply with the advanced approaches rules.

[113] As discussed above, the final rule provides that a foreign banking organization that has a bank holding company subsidiary prior to formation of the U.S. intermediate holding company must continue to comply with the leverage capital requirements under the Board's Regulation Q until December 31, 2017. Under Regulation Q, such bank holding company subsidiary of a foreign banking organization will be required to calculate and report a supplementary leverage ratio, if applicable.

[114] As part of Basel III, the Basel Committee introduced a minimum leverage capital requirement of 3 percent as a backstop measure to the risk-based capital requirements, designed to improve the resilience of the banking system worldwide by limiting the amount of leverage that a banking organization may incur. The Basel III leverage ratio is defined as the ratio of tier 1 capital to a combination of on- and off-balance sheet exposures.

companies.[115] The Board intends to apply the supplementary leverage ratio to a U.S. intermediate holding company that meets the scope of application of that ratio based on its U.S. assets and exposures because it believes that it will similarly strengthen the capital position of a U.S. intermediate holding company.

Many commenters criticized application of the generally-applicable leverage ratio to foreign banking organizations with predominantly broker-dealer activities in the United States. Some commenters asserted that the U.S. intermediate holding companies of several foreign banking organizations would be comprised of over 90 percent U.S. broker-dealer subsidiary assets, making the generally-applicable leverage ratio particularly burdensome. Commenters also argued that if U.S. bank holding companies with large broker-dealer subsidiaries were judged on a sub-consolidated level, the generally-applicable leverage ratio might cause them to appear undercapitalized, and that this illustrated the proposal's departure from the principles of national treatment and competitive equality. Some of these commenters also objected to the application of the generally-applicable leverage ratio to broker-dealer-dominated U.S. intermediate holding companies on the grounds that the generally-applicable leverage ratio treats low-risk broker-dealer activities as risky, and suggested that the generally-applicable leverage ratio exclude what the commenters' characterized as low-risk assets or assets meeting the definition of highly liquid assets under the rule. Other commenters suggested that as an alternative to the generally-applicable leverage ratio, the Board should rely on the results of stress tests of risk-based capital measures.

The final rule does not distinguish between U.S. intermediate holding companies on the basis of their activities. While the U.S. intermediate holding companies of some foreign banking organizations may engage primarily in broker-dealer activities, the U.S. intermediate holding companies of other foreign banking organizations will be more focused on commercial banking or other financial activities. The operations of domestic banking organizations, all of which the Board requires to comply with the minimum generally-applicable leverage ratio, exhibit a similar level of diversity. Rules applicable to U.S. bank holding companies do not vary depending on whether a U.S. bank holding company has predominantly broker-dealer operations.[116] The leverage capital requirements contained in the final rule similarly apply to a foreign banking organization's U.S. intermediate holding company on a consolidated basis regardless of its overall activities.

Moreover, the Board notes that commenters' assertions that certain U.S. bank holding companies might not meet the generally-applicable leverage ratio if it were applied on a sub-consolidated basis were based on commenters' analyses of the generally-applicable leverage ratios of the broker-dealer subsidiaries of those bank holding companies. These comparisons overlook the capital that U.S. bank holding companies maintain at the holding company level or at U.S. subsidiaries other than the broker-dealer, and accordingly, are not relevant comparisons.

For all of the reasons discussed in this section, the final rule applies leverage requirements to the U.S. intermediate holding company as proposed. These leverage requirements include the generally-applicable leverage ratio of 4 percent and, for U.S. intermediate holding companies with total consolidated assets of $250 billion or more or total consolidated on-balance sheet foreign exposures of $10 billion or more, the minimum supplementary leverage ratio of 3 percent. To mitigate the transitional burdens cited by commenters, the final rule generally delays application of the generally-applicable leverage ratio to the U.S. intermediate holding company until January 1, 2018.[117] As described above, in section IV.B.7 of this preamble, to the extent that the foreign banking organization controlled a U.S. bank holding company prior to the formation of the U.S. intermediate holding company, that U.S. bank holding company continues to be subject to the generally-applicable leverage ratio until the U.S. intermediate holding company becomes subject to leverage requirements at the consolidated level.

c. Disclosure Requirements

The final rule, by subjecting a U.S. intermediate holding company to the Board's regulatory capital rules, also requires a U.S. intermediate holding company to make public disclosures according to subpart D of the revised capital framework. Some commenters argued that the disclosure requirements would disproportionately burden foreign banking organizations, which would have to make disclosures at a sub-consolidated level. The disclosure requirement in subpart D, however, has an exception for a subsidiary of a foreign banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. The Board expects that any parent foreign banking organization that is able to certify that it meets home-country requirements at a consolidated level that are consistent with the Basel Capital Framework will be making public disclosures that are comparable to those set forth in subpart D of the revised capital framework. In most cases, therefore, a U.S. intermediate holding company will not be required to make the disclosures under subpart D of the revised capital framework.[118] For a parent foreign banking organization that is unable to demonstrate to the satisfaction of the Board that it meets home country standards that are consistent with the Basel Capital Framework, the Board will evaluate home-country disclosures for general consistency with the disclosures set forth in subpart D of the revised capital framework and will notify the parent and the U.S. intermediate holding company, through the supervisory process, whether disclosures by the U.S. intermediate holding company would be necessary.

2. Capital Planning Requirements

The foreign proposal provided that all U.S. intermediate holding companies with total consolidated assets of $50 billion or more would have been required to comply with the capital plan rule in the same manner and to the same extent as a bank holding company subject to that section.[119] The capital plan rule currently applies to all U.S. domiciled bank holding companies with total consolidated assets of $50 billion or more (except that U.S. domiciled bank holding companies with total consolidated assets of $50 billion or more that are relying on Supervision & Regulation Letter 01–01 are not required

[115] The supplementary leverage ratio cited by the commenters, which is expected to be implemented internationally in 2018 consistent with the Basel Capital Framework transition period, is a measure that is applied only to the largest, most internationally active U.S. banking organizations. The revised capital framework requires an advanced approaches banking organization to meet the supplementary leverage ratio starting on January 1, 2018, consistent with the Basel Capital Framework transitions period.

[116] *See, e.g.,* 12 CFR part 217.

[117] Consistent with the Basel III transition periods, a banking organization that meets or exceeds the thresholds for application of the supplementary leverage ratio must maintain a minimum supplementary leverage ratio of 3 percent beginning on January 1, 2018.

[118] 12 CFR 217.61.

[119] 12 CFR 225.8. *See* 76 FR 74631 (December 1, 2011).

to comply with the capital plan rule until July 21, 2015).[120]

Under the foreign proposal, a U.S. intermediate holding company with total consolidated assets of $50 billion or more would be required to submit an annual capital plan to the Federal Reserve in which it demonstrated an ability to maintain capital above the Board's minimum risk-based capital ratios under both baseline and stressed conditions over a minimum nine-quarter, forward-looking planning horizon. The proposal provided that a U.S. intermediate holding company that is unable to satisfy these requirements generally may not make any capital distributions (other than those capital distributions with respect to which the Board has indicated in writing its non-objection) until it provided a satisfactory capital plan to the Board.

Although some commenters supported the foreign proposal's requirement that a U.S. intermediate holding company engage in capital planning, others asserted that requiring capital planning at the U.S. intermediate holding company level was inappropriate. Commenters criticized the foreign proposal's capital planning requirement on grounds similar to their overall criticism of the foreign proposal, arguing that home-country consolidated capital regulation and parent support were sufficient. Commenters argued that capital planning should be evaluated in the context of the global organization and consider the financial condition of the parent foreign banking organization and developments in the foreign banking organization's home country. Commenters asserted that in the absence of material concern about a foreign banking organization's capital planning process or financial strength, the Board should not require the U.S. intermediate holding company to meet additional proposed capital standards. Commenters suggested that instead of applying the capital plan rule, the Board should use the supervisory process to impose dividend distribution restrictions or additional capital planning and stress-testing requirements on the U.S. intermediate holding company if necessary based on the financial condition of the parent foreign banking organization.

Other commenters expressed concern that applying the capital plan rule would add a ''hidden buffer'' to the minimum requirements applicable to the U.S. intermediate holding company and argued that the capital plan rule's 5 percent minimum tier 1 common ratio over a nine-quarter stress horizon effectively requires the company to hold capital in excess of the minimum requirements in the Basel Capital Framework. In particular, commenters suggested that applying the capital plan rule to U.S. intermediate holding companies with predominantly broker-dealer operations would impose significant new regulatory requirements on broker-dealers. Commenters also criticized the burdens associated with creating a localized capital-planning infrastructure and producing multiple calculations of risk-weighted assets and capital in connection with capital planning. Some commenters argued that the generally-applicable leverage ratio should not be applied as part of the capital plan rule, or, if applied, should be adjusted for assets collateralized by U.S. government or agency debt, or other high-quality collateral.

The capital plan rule is a critical element of the Board's overall capital adequacy framework for large bank holding companies. As applied to U.S. intermediate holding companies, the capital plan rule will help to ensure that such companies hold capital commensurate with the risks they would face under stressed financial conditions and reduce the probability of their failure by limiting their capital distributions if they are unable to demonstrate the ability to meet minimum capital requirements under these stressed financial conditions. While applying the requirements to the U.S. intermediate holding company does not present a complete picture of the consolidated foreign banking organization, it does evaluate whether the foreign banking organization holds sufficient capital in the United States to support its U.S. operations.

In addition, the Board believes that applying the standards to U.S. intermediate holding companies with total consolidated assets of $50 billion or more would further national treatment and competitive equity. The capital plan rule applies to all bank holding companies with total consolidated assets of $50 billion or more and does not distinguish between bank holding companies based on their operations. Applying these standards to the U.S. intermediate holding company of a foreign banking organization in the same way that they are applied to U.S. bank holding companies puts these firms on equal footing with U.S. bank holding companies that compete in the same markets.

One commenter stated that the Board should allow surplus capital in local entities above regulatory thresholds to be deployable to other entities within the group. A U.S. intermediate holding company will be permitted to pay dividends or make other capital distributions under the same conditions in which a U.S. bank holding company could do so.

Commenters also had a variety of requests for flexibility in capital planning as applied to U.S. intermediate holding companies, particularly requesting that the Board permit a U.S. intermediate holding company to reflect parent support in its capital plan. The Board expects U.S. intermediate holding companies to reflect parent support of the U.S. intermediate holding company, through guarantees and keepwell agreements, in their capital plan. However, in demonstrating an ability to meet minimum capital requirements, U.S. intermediate holding companies would not be permitted to reflect these agreements as sources of capital. As discussed above in section IV.A.4 of this preamble, the Board believes that it is important for foreign banks to have sufficient capital in the United States to support their U.S. operations, and that there may be a number of factors that limit a foreign bank's ability to support its U.S. operations during a period of stress. Furthermore, several U.S. bank holding company subsidiaries of foreign banking organizations already comply with the Board's capital planning and stress-testing requirements. Accordingly, the Board is finalizing the capital plan requirement for U.S. intermediate holding companies as proposed. A U.S. intermediate holding company formed by July 1, 2016 will be required to submit its first capital plan in January 2017.[121]

Commenters suggested that the Board apply any capital planning standards in consultation and coordination with home-country supervisors. The Board will continue to work with home-country supervisors in its supervision of foreign banking organizations and their U.S. intermediate holding companies.

3. Parent Capital Requirements

The proposal provided that a foreign banking organization with total consolidated assets of $50 billion or more would have been required to certify or otherwise demonstrate to the Board's satisfaction that it meets capital adequacy standards at the consolidated

[120] Supervision & Regulation Letter 01–01 (January 5, 2001), *available at: http://www.federalreserve.gov/boarddocs/srletters/2001/sr0101.htm.*

[121] The Board intends to expand the reporting panel for the FR Y–14 to provide that a U.S. intermediate holding company must begin filing the FR Y–14A in the reporting cycle after formation of the U.S. intermediate holding company, subject to the transition provisions for new reporters of the FR Y–14 schedules.

level that are consistent with the Basel Capital Framework, as defined below. This requirement was intended to help ensure that the consolidated capital base supporting the activities of U.S. branches and agencies remains strong, and to lessen the degree to which weaknesses at the consolidated foreign parent could undermine the financial strength of its U.S. operations.

The proposal defined the Basel Capital Framework as the regulatory capital framework published by the Basel Committee, as amended from time to time. This requirement would have included the standards in Basel III for minimum risk-based capital ratios, any leverage ratio, and restrictions and limitations if capital conservation buffers above the minimum ratios are not maintained, as these requirements would come into effect under the transitional provisions included in Basel III.[122]

Under the foreign proposal, a company could satisfy this requirement by certifying that it meets the capital adequacy standards established by its home-country supervisor, including with respect to the types of capital instruments that would satisfy requirements for common equity tier 1, additional tier 1, and tier 2 capital and for calculating its risk-weighted assets, if those capital adequacy standards are consistent with the Basel Capital Framework. If a foreign banking organization's home country standards are not consistent with the Basel Capital Framework, the proposal provided that the foreign banking organization may demonstrate to the Board's satisfaction that it meets standards consistent with the Basel Capital Framework.

In addition, under the foreign proposal, a foreign banking organization would have been required to provide to the Board certain information on a consolidated basis. This information would have included its risk-based capital ratios (including its tier 1 risk-based capital ratio and total risk-based capital ratio and amount of tier 1 capital and tier 2 capital), risk-weighted assets, and total assets and, consistent with the transition period in Basel III, the common equity tier 1 ratio, leverage ratio and amount of common equity tier 1 capital, additional tier 1 capital, and total leverage assets on a consolidated basis.[123] The Board intends to propose separately for notice and comment an amendment to the FR Y–7Q to incorporate these items.

Commenters asked the Board to clarify how it would assess whether a home country's capital standards are consistent with the Basel Capital Framework, and urged the Board to be flexible when making such determinations, stating that the Board should look for general consistency with the Basel Capital Framework, rather than requiring point-by-point equivalence. For purposes of the final rule, the Board is clarifying that it intends to consider materiality when assessing consistency with the Basel standards, including whether the home country regulator timely implements any standards made part of the Basel Capital Framework. The Board also intends to take into account analysis regarding the comparability of capital standards, such as the Basel Committee's peer review process.

The proposal provided that if a foreign banking organization did not certify or otherwise demonstrate to the Board's satisfaction that it met capital adequacy standards at the consolidated level that were consistent with the Basel Capital Framework or provide the required information relating to its capital levels and ratios, the Board could impose conditions or restrictions relating to the activities or business operations of the U.S. operations of the foreign banking organization. The proposal further provided that the Board would coordinate with any relevant State or Federal regulator in the implementation of such conditions or restrictions. The Board is finalizing the substance of this provision as proposed. In the event that the foreign banking organization does not make the certification or provide the required information, the Board expects to impose requirements, conditions, or restrictions, including risk-based or leverage capital requirements, on or relating to the activities or business operations of the U.S. operations of the foreign banking organization, but may also take other action as the Board determines is appropriate.

Some commenters requested that the Board establish a standard procedure before imposing conditions or restrictions on the U.S. operations of foreign banking organizations if the foreign banking organization is unable to demonstrate that its home country standards are consistent with the Basel Capital Framework. In response to these comments, the final rule also includes a notice procedure by which the Board would notify a company before it imposes one or more requirements, conditions, or restrictions; describe the basis for imposing any requirement, condition, or restriction; and provide the company an opportunity to request the Board reconsider such requirement, condition, or restriction.

Commenters also urged the Board to allow for flexible application of the definition of ''foreign banking organization'' in determining whether a foreign banking organization means a top-tier holding company or a direct parent of a U.S. subsidiary. As described above in section IV.B.5 of this preamble, the Board has reserved flexibility to modify the standards as necessary to accommodate alternative organizational structures. The Board is therefore finalizing the substance of the parent capital requirements as proposed.

D. Risk-Management Requirements for Foreign Banking Organizations

Section 165(b)(1)(A) of the Dodd-Frank Act requires the Board to establish risk-management requirements as part of the enhanced prudential standards to ensure that strong risk management standards are part of the regulatory and supervisory framework for large bank holding companies and large foreign banking organizations.[124] Section 165(h) of the Dodd-Frank Act directs the Board to issue regulations requiring publicly traded bank holding companies with total consolidated assets of $10 billion or more to establish risk committees.[125]

In the proposal, the Board sought to apply the risk-committee and chief risk officer requirements proposed for U.S. banking organizations to foreign banking organizations in a way that would strengthen a foreign banking organization's oversight and risk management of its combined U.S. operations and would require a foreign banking organization with a large U.S. presence to aggregate and monitor risks on a combined U.S. operations basis. The proposal permitted a foreign banking organization flexibility to structure the oversight of the risks of its U.S. operations in a manner that is efficient and effective in light of its broader enterprise-wide risk-management structure.

While expressing general support for enhanced risk management standards,

[122] Basel III establishes minimum risk-based capital standards of 4.5 percent common equity tier 1 to risk-weighted assets, 6.0 percent tier 1 capital to risk-weighted assets, and 8.0 percent total capital to risk-weighted assets. In addition, Basel III includes restrictions on capital distributions and certain discretionary bonus payments if a banking organization does not hold common equity tier 1 sufficient to exceed the minimum risk-weighted ratio requirements outlined above by at least 2.5 percent. *See* 78 FR 62018.

[123] This information would have been required to be provided as of the close of the most recent quarter and as of the close of the most recent audited reporting period.

[124] 12 U.S.C. 5365(b)(1)(A).

[125] 12 U.S.C. 5365(h).

many commenters advocated that the Board rely on local corporate governance norms and permit greater flexibility in implementing the U.S. risk committee and chief risk officer requirements. Many commenters also urged the Board to defer to home country risk-management standards rather than imposing separate requirements on foreign banking organizations, asserting that foreign regulators already monitor or plan to monitor risk-management practices and have a better perspective on the risk-management practices of a foreign banking organization. Some commenters expressed concern about separating the U.S. risk-management framework from the global risk-management framework.

Additionally, a few commenters asserted that the proposed rule does not adequately take into account the extent to which a foreign company is subject on a consolidated basis to comparable home country risk-management standards. One commenter asserted that the Board has significantly more authority to tailor the risk-management requirements to foreign banking organizations than it exercised in the proposal.

The Board recognizes that foreign banking organizations generally are subject to consolidated risk-management standards in their home countries and that many foreign regulators have strengthened their risk-management requirements since the financial crisis. However, consolidated risk-management practices have not always ensured that a foreign banking organization fully understands the risks undertaken by its U.S. operations. For example, these practices may limit the ability of large foreign banking organizations to aggregate, monitor, and report risks across their U.S. legal entities in an effective and timely manner. In light of the risks posed to U.S. financial stability by foreign banking organizations with a large U.S. presence, the Board believes that it is important for such organizations to aggregate and monitor risks on a combined U.S. operations basis.

Consistent with section 165(b)(2) of the Dodd-Frank Act, the Board has taken into account the extent to which foreign financial companies are subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States. In deference to existing home-country governance standards, the final rule generally provides flexibility for the foreign banking organization to locate its U.S. risk committee as either a committee of its home office or its U.S. intermediate holding company. For the reasons discussed above, the Board believes that foreign banking organizations with a sizable U.S. presence should aggregate and monitor the risks of their combined U.S. operations to ensure the resiliency of such operations. The proposal was tailored to permit foreign banking organizations to structure their risk-management functions based on their unique circumstances while ensuring strong oversight of risks on a combined U.S. operations basis.

Some commenters asserted that fragmented, country-specific risk-management requirements could increase operational risk or hinder communication regarding risk management within an organization and requested that foreign banking organizations be permitted to design their own risk-management systems and structures. A few commenters asserted that, as an alternative to the proposed rule, the Board should work with its foreign counterparts to create an international standard for assessing risk-management practices.

The final rule is intended to address the financial stability risks posed by the U.S. operations of foreign banking organizations. The framework established by the final rule helps foreign banking organizations to effectively aggregate, monitor, and report risks across their U.S. legal entities on a timely basis and helps U.S. supervisors to understand risks posed to U.S. financial stability by the U.S. operations of foreign banking organizations. The Board expects that the U.S. risk-management requirements would be integrated and coordinated with the foreign banking organization's enterprise-wide risk-management practices and therefore would not lead to a fragmented approach to risk-management. The Board will continue to work through the Basel Committee, the FSB, and other international coordinating bodies to promote safe and effective risk-management practices.

Many commenters asserted that the proposed rule was did not adequately consider the diversity among foreign banking organizations and that, because foreign banking organizations structure their global and U.S. operations in diverse ways, the proposal would be costly to implement. Several commenters expressed concern that the proposal was too rigid to accommodate the risk profiles of all foreign banking organizations, such as foreign banking organizations with significant nonbank operations. One commenter asserted that the requirements in the proposed rule would be cumbersome if compliance is strictly enforced at a foreign banking organization's U.S. subsidiary. Another commenter asserted that the proposed rule should not apply to a foreign banking organization's U.S. subsidiary that has $50 billion or more in assets but does not transact with third parties and is established solely for tax, accounting, or administrative purposes.

The Board recognizes that the level and types of risks posed by foreign banking organizations vary based on the size and nature of their U.S. operations, and believes that the final rule strikes an appropriate balance between mandating specific risk-management approaches and permitting foreign banking organizations to structure their risk-management oversight as needed to fit their circumstances. Furthermore, the Board believes that the requirements of the final rule are flexible enough to cover a variety of organizational structures. For instance, a foreign banking organization with a branch or agency may maintain its U.S. risk committee at either the global board of directors or at the U.S. intermediate holding company.[126]

One commenter asserted that the proposed risk-management requirements might not accurately capture U.S. risks because, for example, certain trading positions booked by a U.S. broker-dealer may be hedged by positions booked at the U.S. branch or outside of the United States. Under the final rule, as under the proposal, a foreign banking organization must take appropriate measures to ensure that its combined U.S. operations provide sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out its responsibilities. Thus, a U.S. risk committee should obtain information relevant to hedges booked at the U.S. branch. With respect to positions booked outside of the United States, the Board expects that a U.S. risk committee and U.S. chief risk officer's overview of the risks of the foreign banking organization's combined U.S. operations will be informed by frequent consultation with the global risk committee and global chief risk officer.

Several commenters stated that the Board's existing framework for risk-management oversight of foreign banking organizations is sufficiently robust and that the proposal was therefore unnecessary. The Board emphasizes that the enhanced U.S. risk-management requirements contained in this final rule supplement the Board's existing risk-management guidance and

[126] As further described below, the final rule provides that a U.S. intermediate holding company must have its own risk committee.

supervisory expectations for foreign banking organizations.[127] All foreign banking organizations supervised by the Board should continue to follow such guidance to ensure appropriate oversight of and limitations on risk. The final rule creates additional standards regarding the aggregating and monitoring of risks on a combined U.S. operations basis. For the reasons discussed above, the Board believes that these enhanced prudential standards are important for protecting the stability of the U.S. financial system.

1. Risk Committee Requirements for Foreign Banking Organizations With $10 Billion or More in Total Consolidated Assets But Less Than $50 Billion in Combined U.S. Assets

a. General Comments

Consistent with the requirements of section 165(h) of the Dodd-Frank Act and with the proposed rule, the final rule requires a foreign banking organization with a U.S. presence that has any class of stock (or similar interest) that is publicly traded and total consolidated assets of $10 billion or more, and a foreign banking organization with total consolidated assets of $50 billion or more but combined U.S. assets of $50 billion or less, regardless of whether its stock is publicly traded, to certify to the Board, on an annual basis, that it maintains a U.S. risk committee of its board of directors or equivalent home-country governance structure that (1) oversees the U.S. risk-management policies of the combined U.S. operations of the company, and (2) has at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms. This certification must be filed on an annual basis with the Board concurrently with the foreign banking organization's Federal Reserve Form FR Y–7, Annual Report of Foreign Banking Organizations. The proposed rule would have required the foreign banking organization to take appropriate measures to ensure that its combined U.S. operations implement the risk management policies overseen by the U.S. risk committee, and that its combined U.S. operations provide sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out the responsibilities of the proposal. It provided that the Board may impose conditions or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization if the foreign banking organization was unable to satisfy these requirements.

Several commenters asserted that the asset thresholds that would subject a foreign banking organization to the risk management and risk committee requirements were too low. One commenter urged the Board to exempt all foreign banking organizations with less than $50 billion in combined U.S. assets. Another commenter proposed an exemption for foreign banking organizations with less than $10 billion in combined U.S. assets. The asset thresholds governing the overall risk-management requirements and the risk committee requirement are set by sections 165(a) and 165(h) of the Dodd-Frank Act. Accordingly, the Board is finalizing this aspect of the proposal without change. The final rule also clarifies that a foreign banking organization is a ''publicly traded company'' under the statute if any class of stock (or similar interest, such as an American Depositary Receipt) is publicly traded.

b. Qualifications of Risk-Committee Members

Under the proposal, at least one member of the U.S. risk committee of a publicly traded foreign banking organization with total consolidated assets of $10 billion or more and a foreign banking organization with total consolidated assets of $50 billion or more but combined U.S. assets of $50 billion or less, regardless of whether it was publicly traded, would have been required to have risk-management expertise that is commensurate with the capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors of the foreign banking organization's combined U.S. operations. A few commenters urged the Board not to adopt by regulation minimum qualifications to fulfill the risk-management expertise requirement. These commenters suggested that risk-management expertise be left to home-country discretion.

Although the final rule does not specify by regulation minimum educational or professional credentials for a foreign banking organization's risk committee members, it is appropriate, in light of the requirements of the Dodd-Frank Act, to ensure that at least one member of a foreign banking organization's risk committee has risk-management experience. Under the final rule, a risk committee of foreign banking organizations with $10 billion or more in total consolidated assets but less than $50 billion in combined U.S. assets must include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.[128] Similar to the requirements for risk-management experience for bank holding companies with total consolidated assets of at least $10 billion but less than $50 billion under the domestic rule, experience in a nonbanking or nonfinancial field may satisfy the requirements of the rule for a foreign banking organization with $10 billion or more in total consolidated assets but less than $50 billion in combined U.S. assets, as long as the experience includes the identification, assessment, and management of risk of large, complex firms. Additional discussion of the qualifications necessary for risk-management expertise is presented in section III.B.2 of this preamble.

Consistent with the proposed rule, in order to accommodate the diversity in corporate governance practices across different jurisdictions, the final rule does not require the U.S. risk committee of a foreign banking organization with total consolidated assets of $10 billion or more but combined U.S. assets of less than $50 billion to maintain a specific number of independent directors on the U.S. risk committee.[129]

2. Risk-Management and Risk Committee Requirements for Foreign Banking Organizations With Combined U.S. Assets of $50 Billion or More

The proposed rule would have established additional requirements regarding responsibilities and structure for the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more. In finalizing these requirements, the Board has generally sought to maintain consistency with the risk-management requirements included in the final rule for domestic companies with total consolidated assets of $50 billion or more, with certain adaptations to account for the unique characteristics of foreign banking organizations.

[127] *See* Supervision and Regulation Letter SR 08–8 (Oct. 16, 2008), *available at: http://www.federalreserve.gov/boarddocs/srletters/2008/SR0808.htm*; Supervision and Regulation Letter SR 08–9 (Oct. 16, 2008), *available at: http://www.federalreserve.gov/boarddocs/srletters/2008/SR0809.htm*; Supervision and Regulation Letter SR 12–17 (December 17, 2012), *available at: http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm*.

[128] This provision is consistent with the requirement in section 165(h)(3)(C) of the Dodd-Frank Act and mirrors the requirement in the Board's final rule for U.S. companies, discussed above in section III.B of this preamble. 12 U.S.C. 5365(h)(3)(C).

[129] As described below, the final rule requires a foreign banking organization with combined U.S. assets of $50 billion or more to maintain an independent director on its U.S. risk committee.

a. Responsibilities of U.S. Risk Committee

Under the proposal, a U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more would have been required to review and approve the risk-management practices of the combined U.S. operations and to oversee the operation of an appropriate risk-management framework that is commensurate with the capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors of the company's combined U.S. operations. The proposal would have required the risk management framework for the combined U.S. operations to be consistent with the enterprise-wide risk management policies and include enumerated policies, procedures, policies, and systems.

Some commenters opposed the proposed establishment of specific roles and responsibilities for the U.S. risk committee. For example, one foreign bank stated that the U.S. risk committee should be permitted to rely on the parent company's global policies and procedures and that establishing stand-alone policies and procedures for the company's U.S. operations would be duplicative and result in increased costs and complexity. Some commenters requested additional clarity regarding the relationship between the U.S. risk committee and the global risk-management function. A few commenters also asserted that the U.S. risk committee's responsibilities and its relationship to management and the board of directors should be left to the discretion of the foreign banking organization.

The required elements of a foreign banking organization's risk management framework under the final rule are crucial elements of effective risk management and are consistent with international risk-management standards.[130] Therefore, because of the risks posed by the companies covered by the final rule, the Board believes that it is important to specify the responsibilities for their U.S. risk committees. Accordingly, the Board is finalizing the responsibilities of the U.S. risk committee generally as proposed, with some modifications, as discussed below.

As noted above, the risk management framework for a foreign banking organization's U.S. operations must be consistent with its global framework, and foreign banking organizations generally may rely on their parent company's enterprise-wide risk management policies, as long as those policies and procedures fulfill the minimum requirements established by the final rule. Consistent with the final rule for bank holding companies, as discussed in section III.B of this preamble, the final rule requires the U.S. risk committee to approve and periodically review the risk-management policies, rather than the risk-management practices, of the combined U.S. operations. Additionally, the final rule does not require a foreign banking organization to certify that it has a U.S. risk committee because the Board expects to gain sufficient information through the supervisory process to evaluate whether the U.S. risk committee meets the requirements of this section.

Under the proposal, a U.S. risk committee would have had to meet at least quarterly and more frequently as needed, and fully document and maintain records of its proceedings, including risk-management decisions. One commenter supported the requirement that a U.S. risk committee meet quarterly, but another urged the Board not to adopt a minimum number of meetings for the U.S. risk committee. Based on its supervisory experience, the Board understands that quarterly meetings of board committees are standard in the financial industry and the Board believes that this standard is consistent with good risk management practices, as it helps ensure the risk committee receives timely information about the risk profile of the institution. Accordingly, the Board is adopting these provisions as proposed. In addition to the responsibilities described above, under the proposal, the U.S. risk committee would have been responsible for certain liquidity risk-management responsibilities. These liquidity risk-management responsibilities are components of the U.S. risk-management framework. The Board has adopted the proposed liquidity risk-management responsibilities with some modifications in response to comments and other considerations, as further discussed in section IV.E.2.

b. Independent Member of the U.S. Risk Committee

Under the proposal, the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more must include at least one member who (1) is not an officer or employee of the company or its affiliates and has not been an officer or employee of the company or its affiliates during the previous three years, and (2) is not a member of the immediate family of a person who is, or has been within the last three years, an executive officer of the company or its affiliates. This requirement was adapted from director independence requirements of certain U.S. securities exchanges and was similar to the requirement in the domestic proposal that the chair of the risk committee of a U.S. bank holding company be independent. The proposed requirement applied regardless of where the foreign banking organization's U.S. risk committee was located.

A few commenters asserted that the independent director requirement is not necessary to achieve the U.S. risk committee's purposes. One commenter stated that the independence requirement could hinder the efficacy of the U.S. risk committee because the independent director would not be familiar with the day-to-day operation of the business. One commenter urged the Board to consider allowing foreign banking organizations to include an autonomous reporting line to the chief executive officer or the board of directors in lieu of an independence requirement. Other commenters urged the Board to defer to home country independence standards. One commenter stated that the Board should focus on the U.S. risk committee's independence from business lines, rather than on a particular director's independence from the foreign banking organization.

The Board believes that requiring one member of the U.S. risk committee to be independent from the foreign banking organization helps to ensure that an objective view of the company's U.S. operations is represented on the committee. Further, given the variation in independence requirements across jurisdictions, the final rule, consistent with the proposal, establishes independence standards to ensure consistency among companies subject to the rule. The Board therefore believes that the independence standards set out in the proposal are appropriate minimum requirements. Thus, the Board is adopting the director-

[130] *See, e.g.,* ''Principles for Enhancing Corporate Governance,'' (October 2010), *available at: http://www.bis.org/publ/bcbs176.pdf* (stating that large, internationally active banks should have a board-level risk committee responsible for overseeing implementation of a risk management framework that includes procedures for identifying, assessing, monitoring, and reporting key risks and risk mitigation measures).

independence requirements as proposed.

In addition, the proposal would have required at least one member of the U.S. risk committee to have risk-management expertise. In the final rule, the risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more must include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms. This is consistent with the final rule's requirement for bank holding companies with total consolidated assets of $50 billion or more.

c. Placement of the Risk Committee

Under the proposal, in most cases, a foreign banking organization would have been permitted to maintain its U.S. risk committee either as a committee of the global board of directors, on a standalone basis or as part of its enterprise-wide risk committee, or as a committee of the board of directors of its U.S. intermediate holding company, if applicable. The proposal would have required a foreign banking organization that has combined U.S. assets of $50 billion or more and operates in the United States solely through a U.S. intermediate holding company to maintain its U.S. risk committee at the U.S. intermediate holding company.

Several commenters supported the proposed rule's option to house the U.S. risk committee at either the U.S. intermediate holding company or the parent company. A few commenters urged the Board to permit additional flexibility. Two commenters suggested that the Board should permit a foreign banking organization to comply with the risk committee requirements by establishing a management committee or an independent risk-management function. Another foreign bank requested that the final rule allow supervisors authority to adjust the risk-management requirements where the foreign banking organization operates in the United States only through U.S. subsidiaries. One commenter asserted that the Board should allow the U.S. risk committee to be placed at a company's U.S. branch. One commenter opined that the responsibilities of the U.S. risk committee are more important than its placement. Some commenters, however, indicated that it would be appropriate for foreign banking organizations with large U.S. operations to maintain a risk function in the United States rather than in the company's head office.

The Board believes that it is important to ensure that a senior committee of the board of directors of the foreign banking organization or of the U.S. intermediate holding company has primary responsibility for oversight of the risks of the combined U.S. operations. A management or independent committee or representatives of a U.S. branch may not have the requisite ability to oversee the risks of the combined operations. Under the final rule, the risk committee for the combined U.S. operations generally must be a committee either of the global board of directors of the foreign banking organization or of the U.S. intermediate holding company.[131]

Furthermore, the final rule requires each U.S. intermediate holding company to have a risk committee to oversee the risk function of the U.S. intermediate holding company. As described above, the final rule raises the threshold for formation of a U.S. intermediate holding company from $10 billion to $50 billion in U.S. non-branch assets. In consideration of this change, and the systemic footprint of a foreign banking organization that is required to form a U.S. intermediate holding company, the Board believes that each U.S. intermediate holding company must have a risk committee to oversee the risk function of the U.S. intermediate holding company. The risk committee of the U.S. intermediate holding company may also fulfill the responsibilities of the U.S. risk committee described above.

d. U.S. Chief Risk Officer

Under the proposal, a foreign banking organization with combined U.S. operations of $50 billion or more would have been required to appoint a U.S. chief risk officer. The U.S. chief risk officer would have been required to be employed by the U.S. branch, U.S. agency, U.S. intermediate holding company, or other U.S. subsidiary.

i. Responsibilities

Under the proposal, the U.S. chief risk officer was directly responsible for the measurement, aggregation, and monitoring of risks undertaken by the company's combined U.S. operations. The U.S. chief risk officer would have been directly responsible for the regular provision of information to the U.S. risk committee, the global chief risk officer, and the Board or Federal Reserve supervisory staff.[132] Such information would have included information regarding the nature of and changes to material risks undertaken by the company's combined U.S. operations, including risk management deficiencies and emerging risks, and how such risks relate to the global operations of the company. The proposal also provided that the U.S. chief risk officer would be expected to oversee regularly scheduled meetings, as well as special meetings, with the Board to assess compliance with its risk-management responsibilities. The proposal would have required the U.S. chief risk officer to be available to respond to supervisory inquiries from the Board as needed. The proposal also included several additional risk-management responsibilities for which a U.S. chief risk officer was directly responsible.

Many commenters asserted that the proposal was overly restrictive and advocated for additional flexibility in the U.S. chief risk officer role. One commenter asserted that the U.S. chief risk officer requirement is unnecessary, so long as the foreign banking organization is able to identify an officer inside of the organization to serve as the point of contact for the Board regarding U.S. risk-management practices. Another commenter asserted that the responsibilities of the U.S. chief risk officer should vary depending on the foreign banking organization's activities in the United States. On the other hand, one commenter stated that the responsibilities assigned to the U.S. chief risk officer by the proposed rule were appropriate.

The Board believes that requiring a foreign banking organization with over $50 billion in combined U.S. assets to have a single point of contact within a foreign banking organization that is required to oversee the management of risks within the organization's combined U.S. operations will help reduce the risks posed by foreign banking organizations. Such a structure ensures accountability within the foreign banking organization and facilitates communication between the organization and supervisors. Although the relative emphasis on the responsibilities assigned to the U.S. chief risk officer by the final rule may vary depending on the foreign banking organization's U.S. activities, each responsibility is a crucial component of the role of the U.S. chief risk officer for every foreign banking organization with a large U.S. presence. Accordingly, the final rule continues to require that the

[131] For those foreign banking organizations that operate in the United States solely through U.S. intermediate holding companies, the Board also has retained the requirement that such a foreign banking organization place its U.S. risk committee at the U.S. intermediate holding company as an appropriate means for the U.S. risk committee to have exposure to the foreign banking organization's U.S. operations and to ensure that the U.S. risk committee is accessible to U.S. supervisors.

[132] The reporting would generally take place through the traditional supervisory process.

U.S. chief risk officer report directly and regularly provide to the U.S. risk committee and global chief risk officer and regularly meet and provide information to the Board regarding risk management and compliance with this section. In other cases, consistent with the discussion in section III.B.4 of this preamble, the U.S. chief risk officer of a foreign banking organization may execute his or her responsibilities by working with, or through, others in the organization. Accordingly, the final rule requires the U.S. chief risk officer to ''oversee'' the execution of certain of the responsibilities, rather than to be directly responsible for them.

In addition, the U.S. chief risk officer is responsible for certain liquidity risk-management responsibilities discussed in section IV.E.2 of this preamble. The final rule includes a cross reference to these responsibilities.

ii. Structural Requirements

Under the proposal, a U.S. chief risk officer generally would have reported directly to the U.S. risk committee and the company's global chief risk officer. The preamble to the proposal indicated that the Board may approve an alternative structure on a case-by-case basis if the company demonstrated that the proposed reporting requirements would create an exceptional hardship for the company.

Several commenters advocated for greater flexibility in the reporting structure for the U.S. chief risk officer, asserting that each company should be able to determine reporting lines consistent with its organization and business lines. The Board believes that, in general, it is important for the U.S. chief risk officer to report directly to both the risk committee and the global chief risk officer to ensure that both management and the board are kept apprised of risks facing the company's U.S. operations. The Board's ability to approve an alternative reporting structure on a case-by-case basis provides for sufficient flexibility for companies for which the dual reporting structure would be an exceptional hardship. Accordingly, the Board is adopting the U.S. chief risk officer reporting structure as proposed.

In the proposal, the Board noted that it expects that the primary responsibility of the U.S. chief risk officer would be risk management oversight of the combined U.S. operations and that the U.S. chief risk officer would not also serve as the company's global chief risk officer. Several commenters opposed this aspect of the proposal and a few commenters stated that the Board should not prohibit the U.S. chief risk officer from fulfilling other roles within the organization, as it may be beneficial for the U.S. chief risk officer to have a broad scope of duties. One commenter asserted that the U.S. chief risk officer should be permitted to fulfill other responsibilities appropriate for his or her level of experience.

The Board continues to believe that, in order to ensure that the U.S. chief risk officer is primarily focused on the risk management oversight of the foreign banking organization's combined U.S. operations, the U.S. chief risk officer should not fulfill other roles within the organization. The separation of the U.S. chief risk officer's duties is important to ensure that the oversight of risks facing the foreign banking organization's combined U.S. operations is not compromised by the U.S. chief risk officer devoting attention to other matters within the organization. Accordingly, the Board expects that the U.S. chief risk officer's primary responsibility will be risk management oversight of the combined U.S. operations of the foreign banking organization. The U.S. chief risk officer also should not serve as the company's global chief risk officer.

The proposal would have required the U.S. chief risk officer to be employed by the U.S. branch, U.S. agency, U.S. intermediate holding company, or another U.S. subsidiary. One commenter stated that requiring the U.S. chief risk officer to be employed by a U.S. entity would increase parent company costs. However, in order for the U.S. chief risk officer to have appropriate exposure to the foreign banking organization's U.S. operations and to ensure that the U.S. chief risk officer is accessible to U.S. supervisors, the final rule retains the requirement that the U.S. chief risk officer be employed by a U.S. entity and further clarifies that the U.S. chief risk officer must also be located at a U.S. entity.

The proposal stated that a U.S. chief risk officer must have risk-management expertise that is commensurate with the capital structure, risk profile, complexity, activities, and size of the foreign banking organization's combined U.S. operations. In the proposal, the Board solicited comment on whether it should specify by regulation the minimum qualifications, including educational attainment and professional experience, for a U.S. chief risk officer. Several commenters asserted that establishing minimum qualifications for the U.S. chief risk officer is unnecessary. These commenters encouraged the Board to allow a foreign banking organization to make its own determination as to whether a U.S. chief risk officer candidate is qualified. A few commenters asserted that the U.S. chief risk officer should not be required to hold any specific educational or professional qualifications. One commenter supported minimum qualifications for the U.S. chief risk officer but noted that, as a practical matter, few candidates might initially meet the formal requirements.

Although a foreign banking organization generally should have flexibility to determine the particular qualifications it desires in a U.S. chief risk officer, in light of the risks posed by foreign banking organizations with combined U.S. assets of $50 billion or more, a U.S. chief risk officer should satisfy certain minimum standards. Consistent with the Board's final rule for domestic companies, for the reasons set forth in section III.B.4 of the preamble, the final rule requires a U.S. chief risk officer to have experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

One commenter urged the Board to include other relevant supervisory authorities, including state supervisors in the case of state-licensed foreign banking organizations, in meetings with the U.S. chief risk officer. Consistent with its current practice, the Board expects that other relevant supervisory authorities will be involved throughout the supervision process as appropriate.

In addition, the proposal would have required the U.S. chief risk officer to receive compensation consistent with providing an objective assessment of risks. The Board is finalizing the substance of this requirement as proposed.

E. Liquidity Requirements for Foreign Banking Organizations

Similar to the domestic proposal, the foreign proposal would have required a foreign banking organization with combined U.S. assets of $50 billion or more to establish a framework for managing liquidity risk, conduct monthly liquidity stress tests, and maintain a buffer of highly liquid assets to cover cash-flow needs under stressed conditions. The proposal would have applied a more limited set of liquidity requirements to a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion. These organizations would have been required to report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the company

or its combined U.S. operations only, conducted consistently with the Basel committee principles for liquidity risk management[133] and incorporating 30-day, 90-day, and one-year stress test horizons.[134]

In certain cases, commenters provided views on the liquidity provisions of the proposal that were also applicable to U.S. bank holding companies. Many of the comments and final rule changes applicable to both the foreign and domestic liquidity requirements have been addressed in section III.C of this preamble. Foreign banking organizations seeking more information on the adjustments made to the proposed enhanced prudential standards should therefore also refer to section III.C of this preamble.

1. General Comments

Several commenters expressed support for the proposed rule, stating that many of the requirements would formalize standards already in development within the industry and would align with the liquidity standards applied by other jurisdictions, including liquidity requirements on foreign companies in the United Kingdom. One commenter asserted that the proposal would help foreign banking organizations to withstand small runs and reduce those institutions' reliance on emergency programs. Other commenters raised concerns that the requirements, and particularly the proposed liquidity buffer, discussed further below, could have a potential negative impact on economic growth and reduce the availability of funding in the United States. These commenters also argued against the proposal on systemic stability grounds, asserting that liquidity would be better managed on an integrated or enterprise-wide basis and that local liquidity requirements, particularly for branches operating in the United States, would significantly compromise the ability of a foreign banking organization to manage its liquidity efficiently and effectively on global basis. One commenter expressed concern that local liquidity requirements in the United States could exacerbate the U.S. financial system's exposure to contagion by reducing a foreign banking organization's ability to divert liquid assets from U.S. operations to address a shock abroad. Another commenter suggested that excess liquidity above the minimum amounts required should be permitted to flow freely outside of the United States to address needs in other parts of a foreign banking organization's operations.

As discussed above in section IV.A of this preamble, in a circumstance where multiple parts of a foreign banking organization come under stress simultaneously, a firm that manages its liquidity on a centralized basis may not have sufficient resources to provide support to all parts of the organization, and indeed, during the recent financial crisis, many foreign organizations relied on substantial amounts of Federal Reserve lending to meet liquidity needs in the United States. Further, as noted above in section IV.A of this preamble, foreign banking organizations' increased use of short-term funding in the lead-up to the financial crisis exposed them, in certain cases, to maturity mismatch. While maturity transformation is central to the bank intermediation function, it can also pose risks from both a firm-specific perspective and a broader financial stability perspective. Therefore, the Board is requiring a foreign banking organization to establish a framework for managing liquidity risk and stress-test its liquidity in the United States, as well as maintain a minimum amount of liquidity in the United States. The liquidity requirements contained in the final rule are designed to help address these risks.

The impact of the requirements on a particular foreign banking organization will vary based on a variety of factors. The Board believes the positive impact of the rule in helping to improve the liquidity risk management and position of the U.S. operations of foreign banking organizations justifies the required approach. The Board notes that the final rule continues to permit foreign banking organizations to raise funding in the United States for home-country or other overseas operations, provided that they do so in compliance with the requirements in the final rule. The Board has calibrated the requirements so as not to limit excessively a foreign banking organization's ability to manage liquidity risk on a global basis, and under the proposal and the final rule excess liquidity held in the United States may be used outside the United States to address needs in other parts of the foreign banking organization's operations.

Many commenters asserted that instead of the proposed rule, there should be a global agreement on monitoring and managing liquidity on a consolidated basis, potentially through standards implemented under the Basel Committee principles for liquidity risk management. Several commenters suggested that the proposed requirements are not appropriate for a foreign banking organization whose home country has fully adopted the Basel III LCR. Some commenters requested that the Board exempt from the standards foreign banking organizations that meet certain criteria, such as strength of supervision in the home jurisdiction, parent support, and willingness to provide information, or reduce requirements applicable to those entities. Commenters also recommended that instead of establishing enhanced prudential standards for liquidity, the Board should defer to a foreign banking organization's implementation of home-country liquidity standards, particularly where home-country standards for liquidity monitoring are comparable to those of the proposed enhanced prudential standards, and coordinate with home-country supervisors to evaluate the liquidity adequacy and risk management of the foreign banking organization's U.S. operations. Other commenters argued that the proposed liquidity requirements should be more closely aligned with the liquidity standards under the Basel Committee principles for liquidity risk management. Some stated that the proposal would cause confusion as to how the requirements for foreign banking organizations would align with the proposed U.S. LCR. In addition, one commenter suggested that the Board should synchronize the implementation of liquidity standards under section 165 of the Dodd-Frank Act with the implementation of the Basel III LCR.

The Board remains committed to international cooperation among supervisors and will continue to work on a bilateral and multilateral basis to improve the supervision of international banking organizations. At the same time, the Board does not believe that deferring to home-country supervisors' liquidity supervision adequately addresses foreign banking organizations' liquidity risk in the United States and the associated risks to financial stability. The final rule will ensure that all foreign banking organizations with combined U.S. assets of $50 billion or more have uniform requirements that are also consistent with the requirements for domestic institutions. For the reasons described in section III.C of this preamble in connection with the domestic final rule, above, the Board believes that the final liquidity requirements, which are firm-specific in nature, complement the Basel III LCR, which is a standard, quantitative liquidity requirement. The Board intends through future separate rulemakings to implement the

[133] *See* Basel Committee principles for liquidity risk management, *supra* note 47.

[134] *See* discussion of reporting of stress test results in section III.C.

quantitative liquidity standards included in Basel III for the U.S. operations of some or all foreign banking organization with 50 billion or more in combined U.S. assets.

A number of commenters asserted that the proposed liquidity requirements were unnecessary to mitigate risks to the U.S. financial system posed by the U.S. operations of foreign banking organizations. These commenters contended that existing regulations, including section 23A of the Federal Reserve Act, Financial Industry Regulatory Authority rule 10–57, and the SEC's net capital rules already create an effective framework to mitigate the liquidity risk of exposures to affiliates. Although existing requirements may address aspects of liquidity risks at certain subsidiaries, the requirements in the final rule are meant to establish a framework to address liquidity risk across a foreign banking organization's combined U.S. operations. The existing regulations cited by the commenters may be helpful in mitigating risk, but they do not address liquidity risk across a foreign banking organization's entire U.S. operations.

One commenter requested that the Board clarify that intercompany transactions would be netted for purposes of calculating whether a foreign banking organization would be subject to the liquidity standards. In calculating combined U.S. assets for determining applicability of these requirements, the final rule will rely on ''Total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches and agencies'' as reported on the FR Y–7 form (as of March 31, 2014), which nets interoffice transactions between U.S. entities.

The final rule requires a foreign banking organization with combined U.S. assets of $50 billion or more to establish a framework for managing liquidity risk, engage in independent review and cash-flow projections, establish a contingency funding plan and specific limits, engage in monitoring, stress test its combined U.S. operations and its U.S. intermediate holding company and its U.S. branches and agencies (if any), and hold certain liquidity buffers. Each of these elements of the final rule is discussed below.

2. Framework for Managing Liquidity Risk

As discussed above in section IV.D of this preamble, the foreign proposal would have required foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more to establish a U.S. risk committee to oversee the risk management of the combined U.S. operations of the company and to appoint a chief risk officer to be responsible for implementing the company's risk-management practices for the combined U.S. operations. The foreign proposal would have required the U.S. risk committee of a foreign banking organization with combined U.S. assets of $50 billion or more to oversee the liquidity risk management processes of the U.S. operations of the foreign banking organization, and to review and approve the liquidity risk management strategies, policies, and procedures. As part of these responsibilities, the U.S. risk committee would have been required to review and approve the company's liquidity risk tolerance for its U.S. operations at least annually. As discussed in the preamble to the foreign proposal, in reviewing the liquidity risk tolerance of a foreign banking organization's U.S. operations, the U.S. risk committee would have been required to consider the capital structure, risk profile, complexity, activities, and size of the company's U.S. operations in order to help ensure that the established liquidity risk tolerance is appropriate for the company's business strategy with respect to its U.S. operations and the role of those operations in the U.S. financial system. The proposal provided that the liquidity risk tolerance for the U.S. operations should be consistent with the enterprise-wide liquidity risk tolerance established for the consolidated organization by the board of directors or the enterprise-wide risk committee. The liquidity risk tolerance should reflect the U.S. risk committee's assessment of tradeoffs between the costs and benefits of liquidity. The foreign proposal provided that the U.S. risk committee should communicate the liquidity risk tolerance to management within the U.S. operations such that they understand the U.S. risk committee's policy for managing the trade-offs between the risk of insufficient liquidity and generating profit and are able to apply the policy to liquidity risk management throughout the U.S. operations.

The foreign proposal would have required the U.S. chief risk officer to review and approve the liquidity costs, benefits, and risk of each significant new business line and significant new product of the U.S. operations before the foreign banking organization implements the line or offers the product. At least annually, the U.S. chief risk officer would have been required to review approved significant business lines and products to determine whether each line or product has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each line or product continues to be within the established liquidity risk tolerance of the U.S. operations. As discussed below, a foreign banking organization with combined U.S. assets of $50 billion or more would have also been required to establish a contingency funding plan for its combined U.S. operations. The U.S. chief risk officer would have been required to review and approve the U.S. operations' contingency funding plan at least annually and whenever the company materially revises the plan either for the company as a whole or for the combined U.S. operations specifically. As part of ongoing liquidity risk management within the U.S. operations, the proposal would have required the U.S. chief risk officer, at least quarterly, to conduct an enumerated set of reviews and to establish procedures governing the content of reports on the liquidity risk profile of the combined U.S. operations. The proposal would have also required the U.S. chief risk officer to review strategies and policies for managing liquidity risk established by senior managers and regularly report to the U.S. risk committee.

A few commenters asserted that the proposed governance provisions were too limiting and intruded into parallel governance, risk-management, internal and supervisory reporting, audit and independent review, stress-testing, and IT requirements being imposed by foreign banking organizations' home jurisdictions. While the Board recognizes that foreign banking organizations may be subject to parallel liquidity risk management requirements in their home countries, the Board believes that foreign banking organizations should specifically manage the liquidity risks of their combined U.S. operations through a designated U.S. risk committee and U.S. chief risk officer. The liquidity risk management requirements of the final rule are informed by the liquidity stress that the U.S. operations of foreign banking organizations faced during the recent financial crisis and the risks to U.S. financial stability that could result if foreign banking organizations came under similar stress in the future. As discussed above, during the recent crisis, many foreign banking organizations experienced funding difficulties in their U.S. operations, and

the stressed conditions of these operations posed risks to the U.S. financial system. The Board believes that sound liquidity risk management is vital to ensuring the safety and soundness of the U.S. operations of a foreign banking organization and understands that companies already employ such practices in order to monitor and manage liquidity risk for their U.S. operations.

The Board has adjusted the responsibilities assigned to the U.S. risk committee in the final rule in light of the comments received and in keeping with the Interagency Liquidity Risk Policy Statement. The final rule requires that, rather than the chief risk officer, the U.S. risk committee or a designated subcommittee thereof must review the contingency funding plan of the foreign banking organization. The U.S. chief risk officer is required to approve each new business line and new product and ensure that the liquidity costs, benefits, and risks of each new business line and each new product offered, managed or sold through the company's combined U.S. operations that could have a significant effect on the company's liquidity risk profile are consistent with the company's liquidity risk tolerance, and to review at least annually significant business lines and products offered, managed or sold through the combined U.S. operations to determine whether such business or product has anticipated liquidity risk and to confirm that the strategy or product is within the established liquidity risk tolerance.

The Board is finalizing the other requirements assigned to the U.S. chief risk officer generally as proposed.

3. Independent Review

Under the proposed rule, a foreign banking organization with combined U.S. assets of $50 billion or more would have been required to establish and maintain an independent review function to evaluate the liquidity risk management of its combined U.S. operations. The review function would have been independent of management functions that execute the firm's funding strategy (i.e., the corporate treasury function). The independent review function would have been required to review and evaluate the adequacy and effectiveness of the U.S. operations' liquidity risk management processes regularly, and at least annually. The independent review function would also have been required to assess whether the U.S. operations' liquidity risk management complies with applicable laws, regulations, supervisory guidance, and sound business practices, and to report statutory and regulatory noncompliance and other material liquidity risk management issues to the U.S. risk committee and the enterprise-wide risk committee (or designated subcommittee), in writing, for corrective action. The proposal provided that an appropriate internal review conducted by the independent review function must address all relevant elements of the liquidity risk management process for the U.S. operations, including adherence to the established policies and procedures, and the adequacy of liquidity risk identification, measurement, and reporting processes. Personnel conducting these reviews should seek to understand, test, document, and evaluate the liquidity risk management processes, and recommend solutions to any identified weaknesses.

The Board continues to believe these requirements are important to a comprehensive liquidity risk management framework and is finalizing the independent review requirement as proposed.

4. Cash-Flow Projections

To ensure that a foreign banking organization with combined U.S. assets of $50 billion or more has a sound process for identifying and measuring liquidity risk, the proposed rule would have required comprehensive cash-flow projections for the company's U.S. operations that include forecasts of cash flows arising from assets, liabilities, and off-balance sheet exposures over short-term and long-term time periods, and that identify and quantify discrete and cumulative cash-flow mismatches over these time periods. The proposed rule would have required a foreign banking organization to establish a methodology for making cash-flow projections for its U.S. operations; use reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures in the projections; and adequately document its methodology and assumptions.[135] The preamble to the proposal stated that the Board would expect a company to use dynamic analysis of cash-flow projections because static projections may inadequately quantify important aspects of potential liquidity risk that could have a significant effect on the liquidity risk profile of the U.S. operations. In addition, the proposal would have required the U.S. chief risk officer to review cash flow projections at least quarterly, and the preamble to the proposal stated that the Board would expect senior management periodically to review and approve the assumptions used in the cash-flow projections for the U.S. operations to ensure that they are reasonable and appropriate.

Several commenters objected to the proposed cash-flow projection requirements on the basis that other liquidity controls, such as the liquidity stress tests, already provide an indication of potential liquidity issues. The Board believes that the level of detail required of cash-flow projections under the proposal is consistent with industry standards and that the proposal allows for significant flexibility by permitting cash-flow projections to be commensurate with the risk profile, complexity, and activities of the U.S. operations. While cash-flow projections and stress tests may at times identify a common element of liquidity exposure, the two exercises are complementary tools. Cash-flow projections are most often prepared under business-as-usual base case scenarios and are useful for identifying any funding surpluses or shortfalls on the horizon, while stress tests identify funding vulnerabilities based on adverse market conditions and play a key role in shaping the institution's contingency planning. The Board is adopting the substance of the cash-flow projection requirement without change.

In the proposed rule, the Board requested comment on whether foreign banking organizations should be required to provide statements of cash flows for all activities conducted in U.S. dollars, without reference to whether those activities were conducted through their U.S. operations. Several respondents stated generally that any potential risk would be better addressed through other means, such as assessments of the effectiveness of liquidity risk management (for example, stress testing, or the contingency funding plan) conducted by individual banks on a global basis. One commenter stated that cash flows associated with repos involving U.S. government bonds held by non-U.S. entities should be exempted from the requirement because the purpose of such cash flows is evident. Further, commenters requested that the Board give due consideration to the additional burden caused by such reporting. One commenter was generally supportive of a requirement to provide global U.S. dollar cash-flow statements but only if foreign banking organizations that provide such data are not required to hold capital and liquidity buffers in the United States.

[135] The projections would have been required to reflect cash flows arising from contractual maturities and intercompany transactions, as well as cash flows from new business, funding renewals, customer options, and other potential events that may affect the liquidity of the U.S. operations.

Though the Board sees value in foreign banking organizations producing U.S. dollar cash-flow statements on a periodic basis to help identify potential U.S. dollar mismatches, given considerations cited by commenters, particularly the estimated resources required to produce such a report, the final rule does not require global cash-flow statements for activities conducted in U.S. dollars. However, the Board continues to consider the issue and may separately seek comment in the future on regulatory reporting requirements or information collections pertaining to a company's global U.S. dollar flow activities.

5. Contingency Funding Plan

As part of comprehensive liquidity risk management, the proposal would have required a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain a contingency funding plan to set out the company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan would have been required to be commensurate with the foreign banking organization's capital structure, risk profile, size, and complexity, among other characteristics. The objectives of the contingency funding plan were to provide a plan for responding to a liquidity crisis, to identify alternate liquidity sources that the U.S. operations can access during liquidity stress events, and to describe steps that should be taken to ensure that the company's sources of liquidity are sufficient to fund its operating costs and meet its commitments while minimizing additional costs and disruption. Under the proposed rule, the contingency funding plan would have included a quantitative assessment, an event-management process, and procedures for monitoring emerging liquidity risk events. In addition, a foreign banking organization would have been required to test periodically the components of its contingency funding plan and to update the contingency funding plan annually or more often if necessary.

One commenter asked whether loans from FHLBs and other similar sources of funding, or parent support could be included in the contingency funding plan. The Board is clarifying in this preamble that lines of credit may be included as sources of funds in contingency funding plans; however, firms should consider the characteristics of such funding and how the counterparties may behave in times of stress. Similarly, the Board expects that parent support may be included in the contingency funding plan, but the foreign banking organization must consider limitations on those funds, including the probability of simultaneous stress.

As discussed in the proposal, discount window credit may be incorporated into contingency funding plans as a potential source of funds for a foreign bank's U.S. branches and agencies or subsidiary U.S. insured depository institutions, in a manner consistent with terms provided by Federal Reserve Banks. For example, primary credit is currently available on a collateralized basis for financially sound institutions as a backup source of funds for short-term funding needs. Contingency funding plans that incorporate borrowing from the discount window should specify the actions that would be taken to replace discount window borrowing with more permanent funding, and include the proposed time frame for these actions.

The Board is generally adopting the contingency funding plan requirements as proposed, with modifications consistent with the modifications made to the contingency funding plan requirements for U.S. bank holding companies discussed in section III.C of this preamble. For the reasons discussed in that section, the focus of the contingency funding plan requirements is on the operational aspects of such sources, which can often be tested via ''table top'' or ''war room'' type exercises; however, the implementation of the contingency funding plan for a foreign banking organization should include periodic liquidation of assets, including portions of the foreign banking organization's liquidity buffer in certain instances.

Under the proposal, as part of its event-management process, a foreign banking organization would have been required to identify the circumstances in which it will implement its contingency funding plan. In order to maintain consistency with the rule applicable to bank holding companies, the final rule clarifies that these circumstances must include a failure to meet any minimum liquidity requirement established by the Board for the foreign banking organization's U.S. operations. Foreign banking organizations seeking additional detail on the Board's general supervisory expectations for contingency funding plans should refer to section III.C.5 of this preamble.

6. Liquidity Risk Limits

To enhance management of liquidity risk, the proposed rule would have required a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain limits on potential sources of liquidity risk. Proposed limitations would have included limits on: Concentrations of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and other liquidity risk identifiers; the amount of specified liabilities that mature within various time horizons; and off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events. The U.S. operations would also have been required to monitor intraday liquidity risk exposure in accordance with procedures established by the foreign banking organization.

A foreign banking organization would additionally have been required to monitor its compliance with all limits established and maintained under the specific limit requirements. The size of each limit would have been required to reflect the U.S. operations' capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors, and established liquidity risk tolerance.

One commenter objected to the establishment of specific limits, stating that fixed limits could preclude management from taking reasonable and necessary actions to remain funded during times of stress. The Board views a robust limit structure as an important tool in a liquidity risk governance structure and believes that specific limits would not prevent a firm from taking necessary actions to manage through a crisis. The limits set by the firm must be reflective of the foreign banking organization's structure as well as the risk appetite set by management and the board of directors. The Board expects that there are circumstances that may warrant exceeding a limit threshold; for limits to be effective they should be monitored and have escalation procedures for any breaches that may include notification of senior management, the risk committee, and possibly the Board depending on the severity and impact of the limit breach. Therefore the Board is adopting the limits in the final rule as proposed.

7. Collateral, Legal Entity, and Intraday Liquidity Risk Monitoring

The proposed rule would have required a foreign banking organization with combined U.S. assets of $50 billion or more to monitor liquidity risk related to collateral positions of the U.S. operations, liquidity risks across its U.S. operations, and intraday liquidity positions for its combined U.S. operations. Commenters primarily objected to the intraday liquidity

monitoring requirement, stating that collecting and aggregating relevant information from all entities under the U.S. intermediate holding company would be burdensome. One commenter stated that if intraday liquidity monitoring on settlement activities conducted through a correspondent bank (a direct participating bank in settlement) is expected, it would be impossible unless the correspondent bank discloses relevant information (which may require some type of regulation to enforce). The Board emphasizes that the final rule contains an internal monitoring requirement, which requires foreign banking organizations to establish and maintain procedures for monitoring intraday liquidity risk on the combined U.S. operations. The Board continues to believe intraday liquidity monitoring is an important component of the liquidity risk management process and therefore the final rule adopts the monitoring requirements as proposed.

8. Liquidity Stress Testing

The proposal would have required a foreign banking organization with combined U.S. assets of $50 billion or more to conduct monthly liquidity stress tests separately for its U.S. intermediate holding company and its U.S. branches and agencies. As noted in the preamble to the proposal, the Board believes that stress tests conducted by a foreign banking organization can identify vulnerabilities; quantify the depth, source, and degree of potential liquidity strain in its U.S. operations; and provide information to analyze how severely adverse events, conditions, and outcomes would affect the liquidity risk of its U.S. branches and agencies and its U.S. intermediate holding company. When combined with comprehensive information about an institution's funding position, stress testing can serve as an important tool for effective liquidity risk management.

The proposed rule set forth general parameters for companies' internal liquidity stress testing and would have required each foreign banking organization to take into account its own business model and associated exposure to liquidity risks. The proposed rule would have required the stress testing to incorporate a range of forward-looking stress scenarios that include, at a minimum, separate stress scenarios for adverse conditions due to market stress, idiosyncratic stress, and combined market and idiosyncratic stresses. To ensure that a company's stress testing for its U.S. operations contemplated a range of stress events, the proposed rule would have required that the stress scenarios use a minimum of four time horizons including an overnight, a 30-day, a 90-day, and a one-year time horizon.

Many commenters asserted that the Board should rely on stress tests performed at the home country or consolidated level and not separately impose stress-testing requirements for the U.S. operations. Several commenters stated that the proposal's assumption that the parent foreign banking organization would fail to provide liquidity to the U.S. operations under stress is unrealistic. These commenters stated that there is a low likelihood that a foreign banking organization would sacrifice major subsidiaries to protect the parent without failure of the foreign banking organization as well. Commenters suggested that the Board should instead use the supervisory process to assess resolution plans and determine if additional protections are required. One commenter requested clarification on whether a company may rely on support from a parent entity or an affiliate for a time horizon that is longer than 30 days. Other commenters expressed the view that the proposal would be too burdensome.

The Board agrees that liquidity stress testing at the level of the consolidated parent provides valuable information about the organization's ability to manage liquidity risk on an enterprise-wide basis. The final rule requires the foreign banking organization parent of a U.S. intermediate holding company to make available the results of home-country liquidity stress testing for Board review. However, the Board does not view liquidity stress testing at the parent as a substitute for stress testing at the combined U.S. operations. As explained above, the Board believes that the U.S. and non-U.S. operations of a foreign banking organization could face simultaneous funding pressures, which could hinder the ability of the foreign bank parent to provide the necessary liquidity support to its U.S. operations. Given that risk, the Board does not believe it would be appropriate to modify the proposed requirements to reflect an assumption that foreign banking organizations would provide such liquidity, or to rely solely on the supervisory process to address remaining risks. Therefore, as described further below, for purposes of the stress test used to calculate the liquidity buffer requirement for U.S. intermediate holding companies and U.S. branches and agencies, internal cash inflows can only be used to offset internal cash outflows. However, the Board is clarifying that in stress tests with time horizons longer than 30 days, internal inflows can be considered to offset both internal and external outflows. For the reasons described in section III.C of this preamble, for stress tests beyond 30 days, a foreign banking organization may include lines of credit as cash flow sources, but should fully consider the constraints associated with those lines of credit.

Commenters also asserted that liquidity stress-tests should be tailored to the foreign banking organization's business mix and risk profile. One commenter encouraged the Board to clarify that a foreign banking organization may apply its own models and assumptions for run-off rates and haircuts when conducting liquidity stress tests and when calculating the liquidity buffer. As discussed above and further below, the stress testing requirement is based on internal models. When conducting liquidity stress tests and when calculating the liquidity buffer, each foreign banking organization, consistent with the rules applied to domestic institutions, is required to apply its own models and assumptions for run-off rates and haircuts that are appropriate for its liquidity risks and business model. The final rule does not require a foreign banking organization's U.S. operations to use standardized models or assumptions. Accordingly, the liquidity stress tests are tailored by their nature to the business mix and risk profile of the U.S. operations of the foreign banking organization. In addition, because the liquidity stress tests required by the final rule use firm-derived stress scenarios, the Board would expect the stress scenarios to incorporate historical and hypothetical scenarios to assess the effect on liquidity of various events and circumstances, including variations thereof. As in the proposed rule, the final rule requires a company to incorporate stress scenarios for its U.S. operations that account for adverse conditions due to market stress, idiosyncratic stress, and combined market and idiosyncratic stresses. Additional scenarios should be used as needed to ensure that all of the significant aspects of liquidity risks to the relevant U.S. operations have been modeled. The Board expects foreign banking organizations to derive their own assumptions (subject to supervisory review) as they measure the potential sources and uses of liquidity of the U.S. operations under various stress scenarios, rather than simply adopt standardized haircuts and runoff rates of assets and liabilities, such as those prescribed in the Basel III LCR.

Under the final rule, and as discussed above, only those foreign banking organizations with $50 billion or more in U.S. non-branch assets will be required to form a U.S. intermediate holding company. Accordingly, the final rule clarifies that stress testing must be conducted for the combined U.S. operations (including the U.S. intermediate holding company, if any, or the foreign banking organization's U.S. subsidiaries, if there is no U.S. intermediate holding company, and any U.S. branches and agencies) and separately for each of the U.S. intermediate holding company, if any, and the U.S. branches and agencies of the foreign bank. The Board generally expects that any liquid assets and cash-flow sources considered for purposes of the stress tests would be in the same location and legal entity as the outflows.

In addition to monthly stress testing, the foreign banking organization would have been required to conduct more frequent stress tests, upon the request of the Board, to address rapidly emerging risks or consider the effect of sudden events. The Board could, for example, require the U.S. operations of a company to perform additional stress tests when there has been a significant deterioration in the company's earnings, asset quality, or overall financial condition; when there are negative trends or heightened risks associated with a particular product line of the U.S. operations; or when there are increased concerns over the company's funding of off-balance sheet exposures related to U.S. operations. The proposal further provided that liquidity stress testing must be tailored to, and provide sufficient detail to reflect, the capital structure, risk profile, complexity, activities, size, and other relevant characteristics of the U.S. operations. This tailoring may require analyses by business line, legal entity, or jurisdiction, as well as stress scenarios that use more time horizons than the minimum required under the final rule. The Board is finalizing these requirements generally as proposed, with clarifications to the proposed standards that are consistent with the clarifications to the liquidity stress testing requirements for U.S. bank holding companies.

To account for deteriorations in asset valuations when there is market stress, the proposed rule would have required the foreign banking organization to discount the fair value of an asset that is used as a cash flow source to offset projected funding needs in order to reflect any credit risk and market price volatility of the asset. The proposed rule would have also required that sources of funding used to generate cash to offset projected outflows be diversified by collateral, counterparty, or lender (in the case of stress tests longer than 30 days for the U.S. intermediate holding company or 14 days for the U.S. branch and agency), or other factors associated with the liquidity risk of the assets throughout each stress test planning horizon. Thus, if a foreign banking organization's U.S. operations held high quality assets other than cash and securities issued or guaranteed by the U.S. government, a U.S. government agency, or a U.S. government-sponsored enterprise to meet future outflows, the assets must be diversified by collateral and counterparty and other liquidity risk identifiers. The Board is finalizing the substance of these requirements as proposed.

The proposed rule would have required that the U.S. operations of a foreign banking organization maintain policies and procedures that outline those operations' liquidity stress testing practices, methodologies, and assumptions, and provide for the enhancement of stress testing practices as risks change and as techniques evolve. The proposal would have required the foreign banking organization to have an effective system of controls and oversight over the stress test function. The final rule maintains these requirements generally as proposed.

The proposal would also have required the company to provide to the Board the results of its stress test for U.S. operations on a monthly basis within 14 days of the end of each month. Foreign banking organizations also would have been required to provide to the Board a summary of the results of any liquidity stress test and liquidity buffers established by their home country regulators, on a quarterly basis and within 14 days of completion of the stress test. Several commenters took issue with the requirement that reports be provided within 14 days of completing the stress tests, stating that the requirement would present challenges for foreign banking organizations, and requesting a longer timeframe. To reduce reporting burden, in the final rule, the Board has revised the reporting requirement to require that the results of liquidity stress testing must be made available to the Board in a timely manner, rather than requiring that the results be reported within 14 days.

9. Liquidity Buffer

The proposal would have required a foreign banking organization to hold separate liquidity buffers for its U.S. branches and agencies and its U.S. intermediate holding company, if any, that are equal to their respective net stressed cash-flow needs as identified by the required stress tests. The proposal provided that each calculation of the net stressed cash-flow need described below would need to be performed for the U.S. branches and agencies and U.S. intermediate holding company separately. These calculations assess the stressed cash-flow need both with respect to intragroup transactions and transactions with unaffiliated parties to quantify the liquidity vulnerabilities of the U.S. operations during the 30-day stress horizon. As discussed below, the Board has modified some provisions of the proposed requirements in the final rule in response to comments. Notably, the final rule only requires U.S. branches and agencies to maintain a liquidity buffer for days 1 through 14 of a 30-day stress scenario.

a. General Comments on the Liquidity Buffer

Several commenters argued that the proposed requirement to hold liquid assets in the United States would cause foreign banking organizations subject to the rule to incur costs that would reduce the amount of financing available for long-term lending, and argued that the proposal could negatively affect U.S. wholesale investors by driving demand for wholesale funding away from the United States or to riskier sources of financing. Commenters also stated that the requirement to maintain the liquidity buffer in the United States to cover potential outflows in the United States would create inefficiencies and operational risks, and could cause many foreign banking organizations to reconsider and possibly reduce their U.S. operations. Commenters argued that the proposal could reduce credit availability by disrupting cross-border funding and hedging of international transactions, and increasing reliance on local funding. One commenter asserted that it would be more appropriate to tailor the liquidity buffer to the individual institution's stress situation. According to commenters, an individually tailored liquidity buffer, which may be larger or smaller than any predefined liquidity buffer, would provide greater flexibility to regulators than a ''one-size-fits-all'' approach and result in a more efficient use of liquidity under non-stressed circumstances. Some commenters stated that the buffer should be tailored at the time that early remediation is invoked.

For the reasons described above in section IV.B.3 of this preamble

regarding the U.S. intermediate holding company, the Board does not think that a case-by-case determination for applying the enhanced prudential standards to foreign banking organizations is appropriate. The final rule allows an institution to tailor the liquidity buffer according to the institution's individual liquidity risk profile. The Board believes that it is appropriate to have a minimum highly liquid asset buffer to offset outflows over the first 30 days for the U.S. intermediate holding company and the first 14 days for the U.S. branch or agency to ensure that the U.S. operations can withstand a short period of severe liquidity stress. The Board also believes that it is not appropriate to expect firms to be able to build a buffer just prior to or during a stress event to respond to the causes and consequences of the stressed liquidity conditions. The liquidity buffer is designed so that the firm will have pre-positioned assets that can be used in a time of stress to offset outflows. The liquidity buffer is calculated based on the firm's liquidity stress-test results, and the stress test reflects a firm's capital structure, risk profile, complexity, activities, size and other relevant characteristics of the U.S. operations. This buffer should give the firm more flexibility in a crisis and the pre-positioning of liquidity should give market participants more comfort in a firm's ability to meet short-term obligations during a crisis.

Several commenters asserted that the proposed liquidity requirements would increase foreign banking organizations' overall consolidated liquidity requirement, resulting in a larger overall consolidated liquidity buffer. The primary goal of the proposal and the final rule is to ensure that firms have adequate liquidity buffers in the United States to offset net cash outflows associated with short-term U.S. liabilities. As a general matter, the Board does not believe the final rule will result in a substantially higher consolidated liquidity requirement since the requirements included in the final rule require liquid assets to be maintained in the U.S. to offset potential funding vulnerabilities in the U.S. and the liquidity maintained in the United States will often count toward the foreign banking organization's consolidated requirement. However, the Board acknowledges that the final rule may result in a larger liquidity buffer requirement in certain cases, such as where previously unidentified areas of risk are measured in a more thorough manner as a result of the new requirements.

The Board also believes that requiring firms to maintain a liquidity buffer in the United States to cover potential liquidity needs is consistent with global liquidity monitoring and management of liquidity risk. The Basel Committee principles for liquidity risk management indicate that firms should actively monitor and control liquidity risks at the level of individual legal entities and foreign subsidiaries as well as the consolidated group. As many commenters noted, the Board's proposal is generally consistent with liquidity standards currently in place in other jurisdictions, including the United Kingdom, to address similar concerns with the operations of banks foreign to those jurisdictions.

One commenter suggested that the proposed buffer requirements were not strong enough, noting that during the 2007–2008 financial crisis several foreign banking organizations borrowed heavily from the Federal Reserve for more than one year to deal with their liquidity stress, and urged the Board to require a buffer for more than 30 days. The Board believes that a 30-day liquidity buffer balances the need to ensure adequate liquidity in individual companies, on the one hand, against the availability of adequate liquidity in the market generally, on the other, and will help to provide an institution that is under stress with the required flexibility to meet its most important funding obligations. The Board nonetheless recognizes the importance of maintaining liquidity for time periods both longer and shorter than 30 days and, as such, is requiring that companies conduct stress tests over a minimum of four time horizons, including a one-year horizon. Consistent with the final rule for bank holding companies, the final rule clarifies that the minimum liquidity buffer must be sufficient to meet the projected net stressed cash flow need over the 30-day planning horizon of a liquidity stress test that incorporates an adverse market condition scenario, an idiosyncratic stress event scenario, and a combined market and idiosyncratic stresses scenario. The Board expects, however, that a foreign banking organization will consider the results of its stress tests to determine the appropriate time period for which to hold a liquidity buffer. The Board will continue to monitor liquidity at individual companies and in the market generally.

b. Calculation of Net Stressed Cash-Flow Need

The proposed rule provided that the net stressed cash-flow need, calculated for each of the U.S. intermediate holding company, if any, and the U.S. branches and agencies, would be equal to the sum of (1) the net external stressed cash-flow need and (2) the net intragroup stressed cash-flow need. The calculation of external and intragroup stressed cash-flow needs is conducted separately in order to provide different treatment for these two sets of cash flows when determining the liquidity buffer needs of the U.S. operations. The proposal would have treated these cash flows differently in order to address the risk that internal cash-flow sources may not be available in times of stress. Specifically, the proposed methodology would have permitted internal cash-flow sources of the U.S. branches and agencies or U.S. intermediate holding company to offset internal cash-flow needs of the U.S. branches and agencies or U.S. intermediate holding company only to the extent that the term of the internal cash-flow source is the same as, or shorter than, the term of the internal cash-flow need. These assumptions reflect the risk that under stressed circumstances, the U.S. operations, the head office, and other affiliated counterparties may come under stress simultaneously. Under such a scenario, the head office may be unable or unwilling to return funds to the U.S. branches and agencies of the foreign bank or the U.S. intermediate holding company when those funds are most needed.

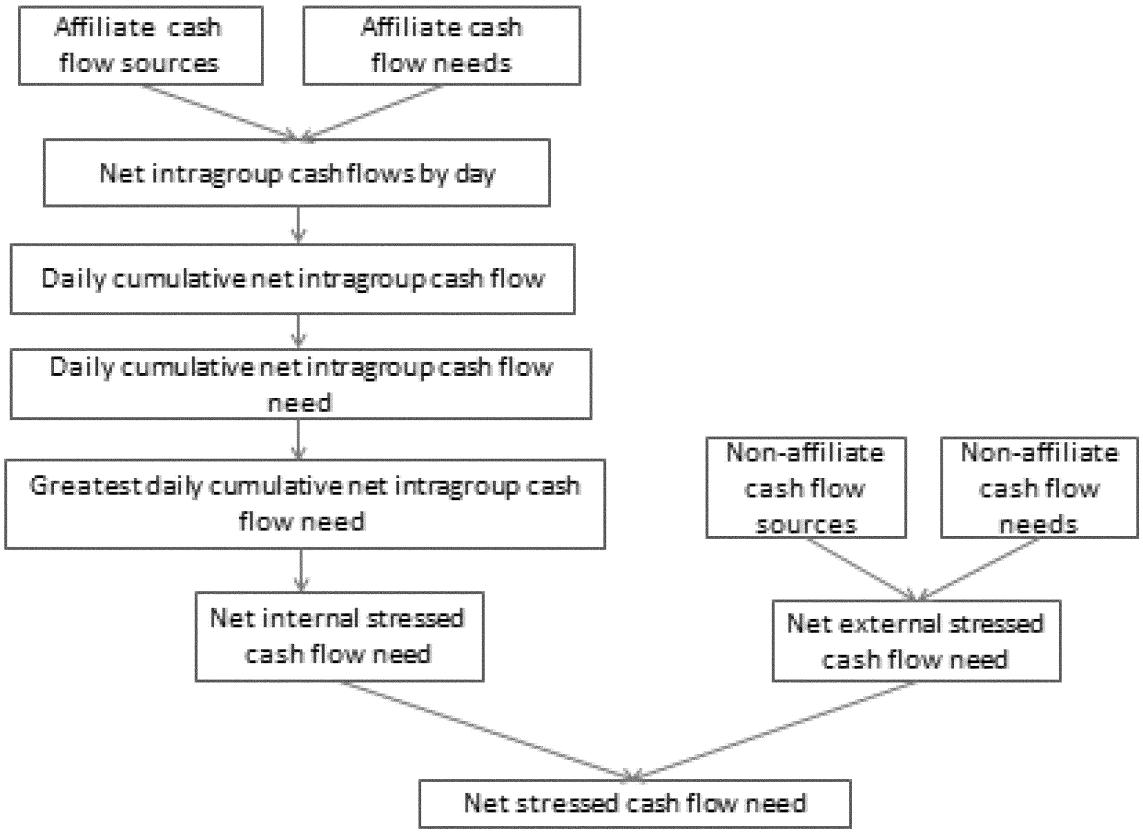
Under the proposal, the net external stressed cash-flow need was defined as the difference between (1) the amount that the U.S. branches and agencies or the U.S. intermediate holding company, respectively, must pay unaffiliated parties over the relevant period in the stress test horizon and (2) the amount that unaffiliated parties must pay the U.S. branches and agencies or the U.S. intermediate holding company, respectively, over the relevant period in the stress test horizon.

The net intragroup stressed cash-flow need was defined as the greatest daily cumulative cash-flow need of the U.S. branches and agencies or a U.S. intermediate holding company, respectively, with respect to transactions with the head office and other affiliated parties during the stress horizon. The daily cumulative cash-flow need was calculated as the sum of the net intragroup cash-flow need calculated for that day and the net intragroup cash-flow need calculated for each previous day of the stress test horizon. The methodology used to calculate the net intragroup stressed cash-flow need was designed to provide a foreign banking organization with an incentive to minimize maturity

mismatches in transactions between the U.S. branches and agencies or U.S. intermediate holding company, on the one hand, and the company's head office or affiliates, on the other hand.

Figure 1 below illustrates the steps required to calculate the components of the liquidity buffer.

Figure 1. Diagram of steps for calculating net stressed cash-flow need



Tables 3, 4, and 5, below, set forth an example of a calculation of net stressed cash-flow need as required under the proposal, using a stress period of five days. For simplification, the cash flows relate to uncollateralized positions. For purposes of the example, cash-flow needs are represented as negative, and cash-flow sources are represented as positive.

TABLE 3—EXAMPLE OF NET EXTERNAL STRESSED CASH-FLOW NEED

	Day 1	Day 2	Day 3	Day 4	Day 5	Period total
Non-affiliate cash-flow sources:						
Maturing loans/placements with other firms	5	5	6	6	6	28
Total non-affiliate cash-flow sources	*5*	*5*	*6*	*6*	*6*	*28*
Non-affiliate cash-flow needs:						
Maturing wholesale funding/deposits	(12)	(8)	(8)	(7)	(7)	(42)
Total non-affiliate cash-flow needs	*(12)*	*(8)*	*(8)*	*(7)*	*(7)*	*(42)*
Net external stressed cash-flow need	(7)	(3)	(2)	(1)	(1)	(14)

TABLE 4—EXAMPLE OF NET INTRAGROUP STRESSED CASH-FLOW NEED

	Day 1	Day 2	Day 3	Day 4	Day 5	Period total
Affiliate cash-flow sources:						
Maturing loans to parent	2	2	3	2	1	10

TABLE 4—EXAMPLE OF NET INTRAGROUP STRESSED CASH-FLOW NEED—Continued

	Day 1	Day 2	Day 3	Day 4	Day 5	Period total
Maturing loans to non-U.S. entities	0	0	1	1	2	4
Total affiliate cash-flow sources	*2*	*2*	*4*	*3*	*3*	*14*
Affiliate cash-flow needs:						
Maturing funding from parent	0	(4)	(10)	0	0	(14)
Maturing deposit from non-U.S. entities	(1)	(1)	(1)	0	0	(3)
Total affiliate cash-flow needs	*(1)*	*(5)*	*(11)*	*0*	*0*	*(17)*
Net intragroup cash-flows	1	(3)	(7)	3	3	(3)
Daily cumulative net intragroup cash-flow	1	(2)	(9)	(6)	(3)	
Daily cumulative net intragroup cash-flow need		(2)	(9)	(6)	(3)	
Greatest daily cumulative net intragroup cash-flow need			(9)			
Net intragroup stressed cash-flow need			(9)			(9)

TABLE 5—EXAMPLE OF NET STRESSED CASH-FLOW NEED CALCULATION

	Period total
Net external stressed cash-flow need	(14)
Net intragroup stressed cash-flow need	(9)
Total net stressed cash-flow need calculation	*(23)*
Liquidity buffer	23

Many commenters provided views on the proposal's approach to intragroup cash flows. For instance, some commenters asserted that intragroup cash flows should be available to offset external cash-flow needs unless the Board has significant, specific reasons to believe that the intragroup cash flows would not be available under stressed conditions. Several commenters argued that, at minimum, some internal funding sources should be allowed to offset external outflows, and that the appropriate level could be tailored to the company or situation, depending upon the level of resources available and parent strength.

The Board believes that it is appropriate to limit the extent to which internal inflows may offset external outflows within the 30-day period. As shown during the recent financial crisis, a foreign banking organization and its U.S. operations could come under simultaneous liquidity stress, limiting the ability of the foreign banking organization to provide support to its U.S. operations. Additionally, during times of stress, unforeseen impediments may arise that do not allow the timely repayment of intercompany loans. Accordingly, the final rule does not allow internal inflows to offset external cash flow needs of a foreign banking organization. Additionally, when determining inter-company cash flow needs the Board believes it is critical to allow foreign banking organizations to count inflows to meet its internal stressed cash-flow needs only to the extent that the term of an internal cash-flow source is the same as, or shorter than, the term of the internal cash-flow need. This ensures that, to the extent the foreign banking organization is reliant on intercompany inflows to offset intercompany outflows, they are scheduled to occur at the same time or before the outflows, limiting maturity mismatch for internal cash flows. The concept of maturity matching ensures that firms with outflows at the beginning of the period cannot for purposes of the final rule recognize inflows that will occur at the end of the stressed period to meet those outflows.

One commenter expressed the view that the bifurcated treatment of internal and external flows would interfere with the ordinary course of financial intermediation between affiliates, specifically for foreign banking organizations that use their U.S. operations to perform U.S. dollar-based activities for other non-U.S. members of their corporate group. For example, a foreign banking organization might use a single U.S. corporate affiliate to conduct certain transactions, such as clearing, hedging, or cash management, on behalf of other non-U.S. affiliates, with the U.S. subsidiary receiving funding from its non-U.S. parent to fund activity with an external counterparty, such as a U.S. central counterparty or other clearing and settlement system.

Though the Board recognizes that the rule could alter the manner in which some of the services that U.S. operations have routinely provided for the global entity are delivered, the Board also notes that a U.S. subsidiary or branch that acts as an intermediary for a non-U.S. affiliate or office of the foreign bank parent is subject to liquidity risk with respect to the non-U.S. affiliate or other office of the foreign bank parent. To the extent the non-U.S. affiliate or office of the foreign bank parent booking the transaction experiences liquidity stress and is unable to return the funding to the U.S. subsidiary or branch, the U.S. subsidiary or branch would need to raise the required funds on its own, placing a strain on the U.S. entity.

Several commenters also raised a concern about securities financing transactions, whereby a foreign banking organization would use its U.S. subsidiaries or branches to provide access to the U.S. financing markets by engaging in matched back-to-back repo, reverse repo and other securities lending and borrowing transactions. One commenter argued that although these transactions present almost no risk to the intermediate entity, which would book two matched, collateralized obligations, the methodology of calculating internal and external liquidity buffers would prevent the cash due from the affiliate from offsetting the U.S. entity's external cash-flow need.

The Board believes the proposed liquidity buffer calculation appropriately addresses the risks associated with the types of back-to-back financing arrangements commenters describe. For example, if a U.S. subsidiary or branch has assumed that the inflows from a maturing reverse repo with the head office can be used to offset the outflows associated with a maturing repo with an external counterparty, the failure of the head office to fulfill its obligation could create an incremental liquidity need on the part of the U.S. subsidiary or branch. Therefore, the Board believes it is appropriate to require the U.S. subsidiary or branch to hold an amount of highly liquid assets against this risk based on stress-test results. The amount

of highly liquid assets may, among other things, reflect the types of collateral involved in the back-to-back transactions and the identity and type of counterparties. Notably, the leg of the transaction between the U.S. subsidiary or branch and the head office generally would not be reflected in the net internal cash-flow calculation of the U.S. subsidiary or branch if it is secured by highly liquid assets, as net internal cash-flow calculations would exclude internal cash-flow sources and internal cash-flow needs that are secured by such assets.

One commenter requested that the final rule clarify that excess liquidity above and beyond stress requirements at an entity held by the U.S. intermediate holding company (such as a broker-dealer) should be available to offset net cash outflows of subsidiaries of the U.S. intermediate holding company. Nothing in the rule would prevent a foreign banking organization from using any liquidity that is held at a subsidiary of the U.S. intermediate holding company to offset potential outflows elsewhere within the U.S. intermediate holding company structure, to the extent that those funds are freely available to the U.S. intermediate holding company.

Many commenters contended that the final rule should allow U.S. intermediate holding companies to deposit cash portions of their liquidity buffer with affiliated branches or U.S. agencies. One commenter requested that if an organization could not deposit funds at an affiliated branch or agency they should be able to maintain their buffer at the Federal Reserve. In these commenters' views, the Board has ample supervisory authority to prevent evasion or misuse of those accounts. While the final rule would allow a U.S. intermediate holding company to maintain its liquidity buffer at a subsidiary of the U.S. intermediate holding company, allowing the U.S. intermediate holding company to maintain its liquidity buffer at the foreign banking organization's U.S. branches or agencies is at odds with the requirement that external outflows not be offset with internal inflows. If a U.S. intermediate holding company were permitted to maintain its liquidity buffer at the foreign banking organization's U.S. branches or agencies and the U.S. intermediate holding company needed to use assets in that buffer to cover outflows during a stress event, that action could exacerbate funding problems at the U.S. branches or agencies at a point in time when it is already likely to be facing liquidity stress. Thus, the final rule adopts this aspect of the proposal without change. Organizations that have affiliates within the U.S. intermediate holding company with access to the Federal Reserve can maintain portions of their buffers at the Federal Reserve; however, for those U.S. intermediate holding companies that do not have access to the Federal Reserve, the Board believes there are sufficient eligible assets for the U.S. intermediate holding company to invest in to maintain an appropriate buffer.

The proposal also would have required the U.S. intermediate holding company and the U.S. branches and agencies of a foreign bank to maintain the liquidity buffer in the United States. One commenter requested that maintenance of the buffer in the United States should mean that the U.S. intermediate holding company or the U.S. branches and agencies have the power of disposition. The Board is clarifying that maintenance of assets in the U.S. means that the assets should be reflected on the balance sheet of the U.S. intermediate holding company or the U.S. branches or agency. As noted below, the Board anticipates that high-quality liquid assets under the proposed U.S. LCR would generally be liquid under most scenarios. The Board acknowledges there may be highly liquid assets that trade on secondary markets and that in order for the U.S. operations of the foreign banking organization to own the assets, the assets must be maintained in an offshore custodial account. The Board further clarifies that cash held in deposits at other banks is a loan and therefore an inflow, not an asset that may be counted in the buffer. For the reasons stated above, the Board is finalizing the substance of these requirements as proposed. In the final rule, the Board has separated the calculations of the net stressed cash flow need for U.S. intermediate holding companies and for U.S. branches and agencies for readability.

The proposal also sought comment on three alternative approaches to address intragroup transactions in determining the size of the required U.S. liquidity buffer: (1) Assume that any cash flows expected to be received by U.S. operations from the head office or affiliates are received one day after the scheduled maturity date; (2) allow the U.S. operations to net all intragroup cash-flow needs and sources over the entire stress period, regardless of the maturities within the stress horizon, but apply a 50 percent haircut to all intragroup cash-flow sources within the stress horizon; or (3) assume that all intragroup cash-flow needs during the relevant stress period mature and roll-off at a 100 percent rate and that all intragroup cash-flow sources within the relevant stress period are not received (that is, they could not be used to offset cash-flow needs).

Commenters requested that the Board not adopt any of these alternative approaches, raising a number of concerns about the technical challenges they might pose. The final rule does not adopt these alternative proposals. The Board believes it will be in a better position to assess the need for additional measures to address intragroup transactions, as well as the potential impact of such measures on firms, after the requirements contained in the final rule are implemented. The Board also expects that the intraday monitoring required in the final rule will capture intraday liquidity risk (internally and externally) and prompt mitigating action when necessary. Therefore, the Board is not adopting these alternative approaches as part of the final rule.

c. National Treatment

Several commenters argued that the limitations on recognizing intragroup cash flow sources unfairly affect foreign banking organizations, and therefore, the Board did not give adequate regard to national treatment in designing the standards. These commenters argued that because U.S. bank holding companies are permitted to rely on global sources of liquidity to meet liquidity needs identified by their internal stress tests, the proposed requirements placed a more substantial burden on foreign banking organizations.

Under the foreign proposal, foreign banking organizations would not have been permitted to assume that liquid assets held at the consolidated level will be available to offset potential U.S. outflows during the first 30 days of a stress scenario. The domestic proposal, however, would have allowed U.S. bank holding companies to take into account highly liquid assets that they held in foreign jurisdictions, while requiring them to recognize foreign outflows, with the expectation that local liquidity requirements must be met before an asset will be considered a liquidity source to meet U.S. obligations.

The liquidity requirements applied to foreign banking organizations treat intragroup flows differently than the requirements applied to U.S. bank holding companies in recognition of the structural differences between U.S. and foreign banking organizations. Simultaneous funding pressures at the U.S. and non-U.S. operations of the foreign banking organization could hinder the ability of the foreign bank

parent to provide the necessary liquidity support to its U.S. operations. As explained above, the Board believes that it is important for a foreign banking organization to maintain liquidity in the United States to support its U.S. operations.

While the same stresses could affect a U.S. bank holding company, through the supervisory process, the Board has and will continue to ensure that U.S. bank holding companies maintain sufficient liquid assets to offset potential outflows. The Board observes that the proposed rules are only one aspect of the enhanced liquidity framework applicable to U.S. bank holding companies and foreign companies, and that the Board will continue to give due regard to national treatment in implementing section 165.

d. Buffers for the U.S. Branches and Agencies of a Foreign Bank

Under the proposal, a U.S. intermediate holding company and the U.S. branches and agencies of a foreign banking organization would have been required to maintain a liquidity buffer equal to their respective net stressed cash-flow need over a 30-day stress horizon. The proposal would have required the U.S. intermediate holding company to maintain the entire 30-day buffer in the United States. In recognition that U.S. branches and agencies are not separate legal entities from their parent foreign bank and can engage only in banking activities by the terms of their licenses, the proposal would have required the U.S. branches and agencies to maintain days 1 through 14 of their 30-day liquidity buffer in the United States, and permitted the remaining requirement to be held at the consolidated level.

Many commenters stated that there should be no separate buffer requirement for U.S. branches and agencies. These commenters argued that a foreign banking organization could calculate its liquidity according to home country regulatory rules and should not be required to specifically hold liquidity in its U.S. branches (for example, it could continue to manage its liquidity on a consolidated basis according to its global liquidity management model). One commenter observed that liabilities are generally due and payable at the head office as well as the branch. One commenter approved of the Board's approach of matching liquidity risk and the liquidity buffer across the U.S. branches and agencies rather than on an individual branch basis.

As discussed in the proposal, the Board proposed the U.S. branch and agency liquidity requirements in order to address the risks created by reliance on short-term funding by U.S. branches and agencies. U.S. branches and agencies exhibited many of the same funding vulnerabilities during the crisis as other foreign banking entities. As a result, the Board generally is finalizing the requirement for U.S. branches and agencies as proposed. However, to reduce the burden on the foreign banking organization, the final rule does not require that U.S. branches and agencies maintain a buffer for days 15 through 30 of the 30-day stress scenario.[136] This recognizes the unique legal structure of branches and agencies and addresses the fact that buffer assets located outside of the U.S. may not be isolated on the parent organization's balance sheet. The Board believes that a buffer maintained outside of the U.S. may be a part of the organization's global liquidity risk management strategy. The Board expects, however, that foreign banking organizations would hold additional liquidity resources, either at the home office or in the United States, to protect against longer periods of funding pressure at their U.S. branches and agencies.

7. Composition of the Liquidity Buffer

The liquidity buffer under the foreign proposal would have been required to be composed of unencumbered highly liquid assets. The proposed definition of highly liquid assets included cash and securities issued or guaranteed by the U.S. government, a U.S. government agency, or a U.S. government-sponsored enterprise because these securities have remained liquid even during prolonged periods of severe liquidity stress. In addition, recognizing that other assets could also be highly liquid, the proposed definition included a provision that would allow a foreign banking organization to include other types of assets in the foreign banking organization's U.S. liquidity buffer if the foreign banking organization demonstrated to the satisfaction of the Federal Reserve that those assets: (i) Have low credit and market risk; (ii) are traded in an active secondary two-way market that has observable market prices, committed market makers, a large number of market participants, and a high trading volume; and (iii) are types of assets that investors historically have purchased in periods of financial market distress during which liquidity is impaired. Several commenters requested that the definition of ''highly liquid assets'' eligible for inclusion in a covered foreign banking organization's liquidity buffer be expanded to include high quality foreign sovereign debt, all assets eligible for inclusion in the Basel III LCR buffer under the Basel Committee standard, and collateral eligible to be pledged at the discount window. One commenter stated that the proposed definition would be unduly narrow and that the Board should ''preapprove'' additional classes of assets in its final rule to provide certainty. Another commenter indicated that high quality securities issued by sovereigns are used extensively as collateral and their exclusion could disrupt the market for non-U.S. sovereign debt and increase systemic risk. One commenter stated that the Board should publish guidelines for qualifying assets and clarify the standards it would apply to reject an asset, and that these guidelines should be the same as those followed by U.S. domestic bank holding companies.

One commenter requested confirmation from the Board that G–7 sovereign debt securities held in the United States by a foreign banking organization's branches and agencies would be eligible to meet the buffer requirement for the first 14 days. Additionally, this commenter requested confirmation from the Board that G–7 sovereign debt that is pledged as collateral with Federal Reserve banks would be eligible for meeting the first 14 days of the branch liquidity buffer requirement. One commenter asserted that preapproving U.S. sovereign debt but not debt of other sovereigns may provide U.S. bank holding companies with an advantage relative to a foreign banking organization. For the reasons discussed in connection with the domestic rule in section III.C.9 of this preamble, the final rule does not specifically enumerate assets other than securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise, or eliminate any assets from consideration for inclusion as highly liquid assets, although, consistent with the domestic final rule, the Board anticipates that high-quality liquid assets under the proposed U.S. LCR will qualify as highly liquid assets for purposes of the buffer.

The proposal also provided that highly liquid assets in the liquidity buffer must be unencumbered and thus readily available at all times to meet a foreign banking organization's liquidity

[136] The final rule clarifies that for U.S. branches and agencies, the minimum liquidity buffer must be sufficient to meet the first 14 days of the projected net stressed cash flow need over the 30-day planning horizon of a liquidity stress test that incorporates an adverse market condition scenario, an idiosyncratic stress event scenario, and a combined market and idiosyncratic stresses scenario.

needs. The proposal would have defined unencumbered, with respect to an asset, to mean that: (i) The asset is not pledged, does not secure, collateralize, or provide credit enhancement to any transaction, and is not subject to any lien; (ii) the asset is free of legal, contractual, or other restrictions on the ability of the company to sell or transfer; and (iii) the asset is not designated as a hedge on a trading position. Commenters requested clarification as to whether assets used to hedge positions would be treated as unencumbered. For the reasons described above in section III.C.9 of this preamble, the final rule's definition of ''unencumbered'' has been modified.

Several commenters requested clarification on how to account for reverse repo transactions in the buffer, particularly those secured by highly liquid assets, and how the tenor of the agreement would play a role in the availability of the asset in a company's highly liquid asset calculation. The Board has addressed these concepts in section III.C.9 of this preamble in connection with the final rule.

One commenter requested clarification as to whether assets held to satisfy the OCC's Capital Equivalency Deposit requirement or state law asset-pledge requirements would be considered ''encumbered'' and thus, not eligible for inclusion in the proposed liquidity buffer. For example, a federally-licensed branch must maintain deposits generally equivalent to 5 percent of the branch's total third-party liabilities in one or more accounts with unaffiliated banks in the state where the branch is located. The commenter objected to considering such assets encumbered, as the encumbrance of those assets is the result of unique bank regulatory and supervisory requirements and therefore, in the commenter's view, these assets should not be viewed as privately pledged or encumbered.

Under the final rule, consistent with the proposal, the Board observes that for assets to be considered highly liquid assets, they must be available for use in the event of a liquidity stress to mitigate cash outflows. Assets required to be pledged to other entities or maintained in segregated accounts due to regulatory requirements may not be available for use in a stress scenario and thus, should not be characterized as highly liquid assets. Should this regulatory requirement be certain to be lowered in a prescribed stressed environment, the firm could include the portion of highly liquid assets that would be made available when simulating such a scenario.

Several commenters recommended that the Board permit a foreign banking organization to hold its liquidity buffer in multiple currencies, and asserted that restricting eligible currencies to only U.S. dollars was unnecessary and inappropriate, as well as inconsistent with the Basel III LCR and home country definitions of highly liquid assets. The commenter argued that diversification provided by a mixed-currency liquidity buffer would be beneficial, and asserted that many U.S. branches and subsidiaries have both U.S. dollar and non-U.S.-dollar liabilities. The commenter also argued that if a branch or intermediate holding company's liquidity risk is denominated in another currency, the buffer for that risk should be permitted to be in that other currency.

The final rule, like the proposal, does not disqualify foreign-currency-denominated assets from inclusion in the buffer. However, currency matching of projected cash inflows and outflows is an important aspect of liquidity risk management that should be monitored on a regular basis and accounted for in the composition of a foreign banking organization's liquidity buffer. Stress testing should consider vulnerabilities associated with currency mismatches of highly liquid assets to potential outflows. When determining appropriate haircuts for buffer assets, currency mismatches should be considered as well as potential frictions associated with currency conversions in certain stress scenarios. In order to ensure robust buffer composition, the proposed rule would also have required a foreign banking organization to impose a discount to the fair value of an asset included in the liquidity buffer to reflect any credit risk and market volatility of the asset. In addition, the proposed rule would have required the pool of unencumbered highly liquid assets to be sufficiently diversified. The final rule adopts these provisions as proposed.

Several commenters requested that the Board clarify when assets in the liquidity buffers could be used to meet liquidity needs and the potential consequences if such use led to a buffer smaller than the net outflows as measured by the stress test. One commenter urged the Board to align the final rule with certain components of the Basel III LCR that allow firms to use their liquidity buffers in a ''situation of financial stress'' and provide guidelines for how banking regulators should evaluate a firm's use of its branches' liquidity buffer. The Board describes the appropriate parameters for the use of the buffer in response to similar comments on the domestic proposal in section III.C.9 of this preamble.

10. Liquidity Requirements for Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of Less Than $50 Billion

Under the proposal, a foreign banking organization with $50 billion or more in total consolidated assets and combined U.S. assets of less than $50 billion would have been required to report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the company or its combined U.S. operations only, conducted consistently with the Basel Committee principles for liquidity risk management [137] and incorporating 30-day, 90-day, and one-year stress test horizons. A company that does not comply with this requirement must cause its combined U.S. operations to remain in a net due to funding position or a net due from funding position with non-U.S. affiliated entities equal to no more than 25 percent of the third-party liabilities of its combined U.S. operations on a daily basis. One commenter asserted that, in the absence of effective management and exit strategies from the due from position, this level was too high, and that a lower percentage or permitting a due to position would be appropriate. The Board proposed the net due from limitation as a precautionary measure, because in the event that the foreign banking organization does not provide the results of an internal liquidity stress test report, the Board would have difficulty in assessing the liquidity risk position and management of the foreign banking organization. The Board notes that this requirement applies only when a foreign banking organization with over $50 billion in total consolidated assets but combined U.S. assets of less than $50 billion is unable to report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the company or its combined U.S. operations, conducted consistently with the Basel Committee principles for liquidity risk management. The Board believes that these restrictions are appropriate for a company that is unable to make such a report, and is finalizing these standards as proposed.

11. Short-Term Debt Limits

The Board noted in the preamble to the proposed rule that the Dodd-Frank

[137] Basel Committee principles for liquidity risk management, *supra* note 47.

Act contemplated additional enhanced prudential standards, including a limit on short-term debt, and requested comment on whether it should establish short term debt limits in addition to, or in place of, the Basel Committee principles for liquidity risk management in the future. Most commenters felt that establishing short term debt limits would be overbroad and that there are other more effective tools in place, and that such regulatory requirements are best handled via the Basel III LCR and the NSFR and bank-prepared liquidity stress tests. One commenter suggested that the Board should refrain from implementing a short-term debt limit until after it determined how the other aspects of the proposal work in practice. One commenter was in favor of such a limit, stating that if a short term debt limit were set low enough, it could mitigate the effects of shortfalls in dollar funding caused by transient shocks to financial markets.

As discussed above, the Board has sought comment on the proposed U.S. LCR, and it continues to work with the Basel Committee to improve the Basel Committee principles for liquidity risk management. The Board will continue to evaluate whether short-term debt limits would be appropriate in light of the developing liquidity regulatory and supervisory framework, and may seek comment on a proposal in the future.

F. Stress-Test Requirements for Foreign Banking Organizations

Section 165(i)(1) of the Dodd-Frank Act requires the Board to conduct annual stress tests of bank holding companies with total consolidated assets of $50 billion or more, including foreign banking organizations. In addition, section 165(i)(2) requires the Board to issue regulations establishing requirements for certain regulated financial companies, including foreign banking organizations and foreign savings and loan holding companies with total consolidated assets of more than $10 billion, to conduct company-run stress tests.

On October 9, 2012, the Board issued a final rule implementing the supervisory and company-run stress testing requirements for bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board.[138] Concurrently, the Board issued a final rule implementing the company-run stress testing requirements for bank holding companies with total consolidated assets of more than $10 billion but less than $50 billion.[139]

The foreign proposal sought to adapt the requirements of the final stress testing rules currently applicable to bank holding companies to the U.S. operations of foreign banking organizations. Under the proposal, U.S. intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion would have been required to conduct annual company-run stress tests. U.S. intermediate holding companies with assets of $50 billion or more would have been required to conduct semi-annual company-run stress tests and would have been subject to annual supervisory stress tests. These requirements are similar to the requirements that apply to bank holding companies.

Under the foreign proposal, the remaining U.S. operations of a foreign banking organization—the branches and agencies and, to the extent that a foreign banking organization does not establish a U.S. intermediate holding company, the foreign banking organization's U.S. subsidiaries—would have been subject to a separate stress testing standard. Under this standard, a foreign banking organization would have been required to meet the requirements of its home country stress test regime (provided that the home country stress test regime meets certain minimum standards). In addition, certain foreign banking organizations would have been required to submit the information required by the rule.

The proposal provided that if any of the conditions above were not met, then the U.S. branches and agencies of a foreign banking organization would have been subject to an asset-maintenance requirement and, potentially, other requirements, and the foreign banking organization would have been required to conduct an annual stress test of any U.S. subsidiary not held under a U.S. intermediate holding company (other than a section 2(h)(2) company), separately or as part of an enterprise-wide stress test. In addition, the foreign proposal would have applied stress testing requirements to foreign banking organizations with total consolidated assets of more than $10 billion, but combined U.S. assets of less than $50 billion, and foreign savings and loan holding companies with total consolidated assets of more than $10 billion. Consistent with the approach taken in the final stress testing rules for U.S. firms, the proposal would have tailored the stress testing requirements based on the size of the U.S. operations of the foreign banking organizations.

1. U.S. Intermediate Holding Companies

Under the proposal, U.S. intermediate holding companies with total consolidated assets of more than $10 billion but less than $50 billion would have been subject to the annual company-run stress-testing requirements set forth in Regulation YY, including the reporting and disclosure requirements. As discussed previously, the Board has raised the threshold for requiring formation of a U.S. intermediate holding company to $50 billion. Accordingly, the final rule does not include this provision. A U.S. bank holding company with total consolidated assets greater than $10 billion but less than $50 billion that was a subsidiary of a foreign banking organization would be subject to subpart B (renumbered in connection with this final rule, as described above) under the terms of that subpart.

Under the proposal, U.S. intermediate holding companies with total consolidated assets of $50 billion or more would have been subject to the annual supervisory and semi-annual company-run stress-testing requirements set forth in subparts F and G of Regulation YY.[140] The Board would have conducted an annual supervisory stress test of the U.S. intermediate holding company in the same manner as the Board conducts supervisory stress tests under subpart F of Regulation YY and disclosed the results of the stress test. The U.S. intermediate holding company would have been required to report information to the Board to support the supervisory stress tests. The U.S. intermediate holding company would also have been required to conduct two company-run stress tests per year in the same manner as a bank holding company under subpart G of Regulation YY. The first test would have used scenarios provided by the Board (the annual test) and the second would have used scenarios developed by the company (the mid-cycle test). In connection with the annual test, the U.S. intermediate holding company would have been required to file a regulatory report containing the results of its stress test with the Board by January 5 of each year and publicly disclose a summary of the results under the severely adverse scenario between March 15 and March 31.[141] In

[138] *See* 77 FR 62378 (October 12, 2012).

[139] *See* 77 FR 62396 (October 12, 2012).

[140] *See* 77 FR 62378 (October 12, 2012); 77 FR 62396 (October 12, 2012).

[141] The annual company-run stress tests would satisfy some of a large intermediate holding company's proposed obligations under the Board's capital plan rule (12 CFR 225.8).

connection with the mid-cycle test, the company would have been required to file a regulatory report containing the results of this stress test by July 5 of each year and disclose a summary of results between September 15 and September 30.

a. General Comments

While one commenter expressed the view that the stress-testing requirements were appropriately calibrated for a foreign banking organization without a U.S. branch or agency, other commenters expressed views that the Board should fully defer to the home country stress-testing regimes and receive information on home-country reports, rather than impose stress-testing requirements on the U.S. intermediate holding companies. Commenters argued that stress testing is most effective when applied on a consolidated basis, and that requiring U.S. intermediate holding companies to conduct a separate stress test would be redundant and would not accurately reflect the ability of the U.S. intermediate holding company to absorb losses. Several commenters requested that the Board align U.S. intermediate holding company stress tests with stress tests conducted by the foreign banking organization, and permit the U.S. intermediate holding company to follow the stress-testing framework, methodology, and timing used by the foreign bank in its home country stress tests. In these commenters' views, aligning the requirements would avoid conflicts, inconsistent results, and duplicative efforts.

The Board agrees that stress testing at the level of the consolidated parent provides valuable information about the organization's ability to maintain adequate capital through stressed circumstances on an enterprise-wide basis. The final rule requires the foreign banking organization parent of a U.S. intermediate holding company to be subject to a home-country stress testing regime and to report the results of those stress tests to the Board. However, these parent stress tests are not a substitute for stress tests at the U.S. intermediate holding company level, which provide information on the capital adequacy of the U.S. intermediate holding company and on its ability to support its U.S. operations during a period of stress. As discussed in sections IV.A and IV.C of this preamble, the Board believes that it is important for the U.S. operations of a foreign banking organization to hold capital in the United States with respect to their operations, and for the same reasons, U.S. intermediate holding companies should be able to demonstrate an ability to absorb losses and continue operations in times of stress.

While the Board recognizes that the stress tests conducted at the U.S. intermediate holding company might involve different assumptions than those conducted at the foreign bank parent, the stress test conducted by the U.S. intermediate holding company will be consistent with and comparable to those conducted by similarly-sized U.S. firms. The Board uses a consistent stress-testing approach across companies to conduct the supervisory stress test and requires companies to conduct company-run stress tests under the supervisory stress test scenarios to permit supervisors, firms, and the public to facilitate comparison of the results across companies. Similarly, the Board prescribes a set of capital action assumptions for holding companies to use in their company-run stress tests, uses those same capital assumptions in its supervisory stress test, and discloses the results of its stress test during the same timeframe that bank holding companies are required to disclose the results of their company-run stress tests. Permitting U.S. intermediate holding companies to deviate from the stress-test requirements for U.S. bank holding companies in favor of the regime in the home country of their foreign bank parents would reduce comparability across companies and with the results of the Board's supervisory stress tests.

One commenter argued that the proposed U.S. intermediate holding company requirements would increase operating costs and could potentially misalign U.S. intermediate holding company and foreign banking organization risk management, creating the possibility of operational risk. For instance, one commenter suggested that a foreign bank might maintain hedges of trades booked at the U.S. broker-dealer outside of the United States, so that these hedges would not be reflected in the stress tests. Commenters noted that foreign banking organizations are already subject to Basel III and home-country supervision, and that the Board should focus on building international regulatory networks. Commenters also requested that the Board allow U.S. intermediate holding companies to account for the capital and financial strength of the parent and support from the parent and affiliates in stress testing projections, provided the U.S. intermediate holding company can demonstrate that the parent could provide support under a given scenario.

During periods of financial stress, subsidiaries of foreign banking organizations may not be able to rely on support from their home-country parent, and therefore, these subsidiaries should have the ability to absorb losses and maintain ready access to funding, meet obligations to creditors and other counterparties, and continue to serve as credit intermediaries without assuming such support. Accordingly, under the final rule, a U.S. intermediate holding company must project its regulatory capital ratios in its stress tests without additional consideration of possible support from its home-country parent. As noted above in section IV.D of this preamble, the Board expects the U.S. risk-management requirements under the final rule to be integrated and coordinated with the foreign banking organization's enterprise-wide risk-management practices, and therefore the Board believes that the final rule will not lead to a fragmented approach to risk management.

Some commenters argued that the Board did not adequately take into account home country standards in developing the proposed stress testing requirements and that the proposed requirements were inconsistent with national treatment because they required stress testing at a subsidiary level, rather than at the consolidated parent level. According to these commenters, the proposal could result in extraterritorial application if U.S. authorities imposed stricter requirements on foreign banking organizations than home-country supervisors.

The final rule relies on the home-country stress-test regime in applying stress-testing requirements to branches and agencies of foreign banks, in recognition that branches and agencies of foreign banks are not separate legal entities from their parent foreign bank.[142] It imposes stress-testing standards on U.S. intermediate holding companies because they are separate legal entities, and may not be able to rely on support from their home-country parent in times of stress as discussed above. In addition, the stress-testing requirements promote market discipline for foreign banking organizations and U.S. bank holding companies by ensuring that all banking organizations with $50 billion or more in assets in the United States are subject to comparable stress-testing requirements. Bank holding companies with over $50 billion in total consolidated assets—including some bank holding companies owned by foreign banking organizations—are already subject to

[142] The Board notes that the requirement to take into account comparable home country standards pursuant to section 165(b)(2) does not by its terms apply to the stress testing requirement in section 165(i) of the Dodd-Frank Act.

stress-test requirements. Furthermore, foreign subsidiaries of U.S. bank holding companies may be required to comply with stress-test requirements imposed by host-country regulators, and in some circumstances, may be subject to requirements similar to those included in the final rule.

b. Reporting and Disclosure

Under the proposal, U.S. intermediate holding companies would have been subject to reporting obligations in connection with their company-run and supervisory stress tests, and would have been required to publicly disclose the results of their company-run stress tests. In connection with the annual stress test, a U.S. intermediate holding company would have been required to file a regulatory report containing the results of its stress test with the Board by January 5 of each year and publicly disclose a summary of the results under the severely adverse scenario between March 15 and March 31.[143] In connection with the mid-cycle test, the company would have been required to file a regulatory report containing the results of this stress test by July 5 of each year and disclose a summary of results between September 15 and September 30. The U.S. intermediate holding company would have been required to file regulatory reports that contain information to support the Board's supervisory stress tests. The Board would disclose a summary of the results of its supervisory stress test no later than March 31 of each calendar year.

Commenters suggested that the reporting requirements should be more limited for U.S. intermediate holding companies than for U.S. bank holding companies, which are required to file the Board's Forms FR Y–14A, Q, and M (Capital Assessments and stress testing (FR Y–14)), because U.S. intermediate holding companies are likely to be nonpublic subsidiaries of foreign banking organizations.

The Board uses the FR Y–14 regulatory report to receive information necessary to support its supervisory stress test and for it to review the stress tests that a company conducts. Because U.S. intermediate holding companies will be required to conduct company-run stress tests and will be subject to the Board's supervisory stress test, it will be necessary for U.S. intermediate holding companies to file similar regulatory reports with the Board. Moreover, the Board notes that some wholly-owned U.S. bank holding company subsidiaries of foreign banking organizations have already filed the FR Y–14 in connection with their first supervisory stress test. The Board intends to expand the reporting panel for the FR Y–14 to provide that a U.S. intermediate holding company must begin filing the FR Y–14A in the reporting cycle after formation of the U.S. intermediate holding company, subject to the transition provisions for new reporters of the FR Y–14 schedules. For U.S. intermediate holding companies formed by July 1, 2016, the first FR Y–14A report is expected to be due in January 2017.

Commenters also criticized the proposed stress-testing disclosure requirements. Some commenters stated that publication of stress-test results should not be required because U.S. intermediate holding companies do not operate separately from their foreign bank parents. One commenter argued that U.S. intermediate holding companies are unlikely to have external equity shareholders, and disclosure of stress-test results would be likely to confuse the parent foreign banking organization's investors without a corresponding benefit. In addition, one commenter argued that requiring public disclosure of U.S. intermediate holding company stress-test results would disadvantage foreign banking organizations, which would publish on a U.S. intermediate holding company level, against their U.S. peers, which could publish on a total bank holding company level. Another commenter suggested that the Board should consult with industry and individual U.S. intermediate holding companies before disclosing stress-test results.

The Board believes that the public disclosure of the results of supervisory and company-run stress tests helps to provide valuable information to market participants, enhance transparency, and facilitate market discipline. While a U.S. intermediate holding company may not have external shareholders, the company's external creditors, counterparties, and clients would benefit from the enhanced information about the capital adequacy of the U.S. intermediate holding company. Further, public disclosure is a key component of the stress-test requirements mandated by the Dodd-Frank Act. The Dodd-Frank Act requires disclosure by all financial companies, including bank holding companies that are not publicly traded.[144]

The final rule's stress-testing disclosure requirements for U.S. intermediate holding companies set only the minimum standard of disclosure and would not limit the ability of a foreign banking organization or its U.S. intermediate holding company to publish additional information on the stress test results. For instance, to the extent that a U.S. intermediate holding company's disclosures are different from disclosures required of the foreign parent, the foreign banking organization could describe the differences between the stress testing methodologies that led to the divergent results. The final rule maintains the timing and content of the disclosures in order to facilitate the comparability of stress tests results across companies subject to Dodd-Frank Act stress tests.

c. Timing of Stress Tests

Several commenters requested that the Board provide additional time for foreign banks to come into compliance. Some commenters suggested that the Board allow two or three years to phase in the stress-test requirements, suggesting that this additional time would give time for markets and firms to adjust and for policymakers to monitor and modify the stress-test regime as necessary. More specifically, one commenter suggested that the Board phase in application of the rule, such that in the initial years of the framework, U.S. intermediate holding companies would be required to conduct stress tests and report to the Board, but would not be required to publicly report the results or be sanctioned for deficiencies. This commenter cited the Board's treatment of U.S. bank holding companies with over $50 billion in total consolidated assets that participated in the Capital Plan Review exercise as precedent for this approach.

Commenters indicated that a phase-in period would be particularly important for those U.S. intermediate holding companies that do not own U.S. depository institutions and are not currently subject to the Board's stress-testing regimes. Similarly, one commenter suggested that a longer phase-in period would be appropriate for foreign banks with U.S. assets of less than $50 billion, as they would face a more onerous implementation process. One commenter also suggested that the Board should allow extensions as necessary for additional time to meet the structural requirements of the proposal. As discussed previously in section II.B of this preamble, the Board has extended the compliance period for

[143] As noted above, the annual company-run stress tests would satisfy some of a large intermediate holding company's proposed obligations under the Board's capital plan rule (12 CFR 225.8).

[144] 12 U.S.C. 165(i)(2)(C)(iv).

all companies in order to give them adequate time to comply with all of the standards, including the stress testing standards. The stress-test cycle for a U.S. intermediate holding company formed by July 1, 2016 will begin in October 2017.[145]

2. Stress-Test Requirements for Branches and Agencies of Foreign Banks With Combined U.S. Assets of $50 Billion or More

In addition to the U.S. intermediate holding company requirements described above, the proposal provided that a foreign banking organization with combined U.S. assets of $50 billion or more must be subject to a consolidated capital stress testing regime that included an annual supervisory stress test conducted by the foreign banking organization's home-country supervisor.[146] Alternatively, an annual evaluation and review by the foreign banking organization's home-country supervisor of an internal capital adequacy stress test conducted by the foreign banking organization would have met the requirements. In either case, the proposal provided that in order to be recognized by the stress-testing framework of the proposed rule, the home-country capital stress-testing regime must set forth requirements for governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization. The foreign banking organization would have been required to conduct such stress tests or be subject to a supervisory stress test and meet any minimum standards set by its home-country supervisor with respect to the stress tests.

Many commenters expressed broad support for the approach to stress tests for U.S. branches and agencies. These commenters expressed the view that the proposed stress-test framework would provide additional insight to U.S.-specific capital adequacy assessments and contains straightforward and common-sense steps. Some commenters requested more information about the Board's metrics for evaluating whether a home-country stress testing framework is consistent with Dodd-Frank Act stress testing. Commenters asked for clarification that the elements described above are the only elements required to satisfy the requirement that stress tests be broadly consistent with the U.S. stress-testing requirements, and others suggested that the comparison should not match the U.S. stress testing regime point-by-point to the home-country regime. Other commenters requested more clarity on desired home-country requirements for governance and controls over stress tests. Some commenters asked that the Board provide flexibility for small deviations from the enumerated standard, for example, allowing for a multi-year rather than annual, stress test cycle.

The Board believes that all elements set forth in the final rule are appropriate standards for stress testing, and a home-country stress test must meet all of the elements of the final rule. For instance, the requirement that a company conduct a stress test at least annually ensures that the stress test results do not become stale and signifies that stress tests are integrated into the home-country supervisory process. Similarly, the requirement that stress testing practices be subject to governance and controls by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization helps to ensure that the stress tests produce meaningful results that inform a company's business and risk management decisions, and that those tests function as intended. The rule requires governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization but is flexible regarding appropriate standards for governance and controls because of the variety of risk-management structures and practices across countries. A foreign banking organization could satisfy the governance standards required under the final rule by maintaining appropriate oversight of stress-testing practices, policies and procedures, and the use of stress-test results by senior management and the board of directors in their decision-making. Similarly, a foreign banking organization could meet the standards for controls by adopting process verification, model validation, documentation, and internal audit.

Under the proposal, if the U.S. branches and agencies of a foreign banking organization with combined U.S. assets of $50 billion or more were providing funding to the foreign banking organization's non-U.S. offices and non-U.S. affiliates on a net basis over a stress test cycle, the foreign banking organization would have also been required to demonstrate to the Board that it has adequate capital to withstand stressed conditions. Commenters requested clarification on what standards the Board would apply to determine whether a foreign banking organization that has U.S. branches and agencies in a net ''due from'' position with respect to the foreign bank parent or its international affiliates has adequate capital to ''absorb losses in stressed conditions.'' Commenters expressed the view that the operative standards should be based on the foreign banking organization's own home country stress testing regime, and not, for example, on Board-defined criteria. In light of these comments, the Board has removed this requirement in the final rule. In the event that a foreign banking organization were in a net ''due from'' position, the Board would seek more information from the foreign banking organization regarding the results of its supervisory stress test and may take other supervisory actions. However, the Board does not intend to make a formal determination that the foreign banking organization has adequate capital to ''absorb losses in stressed conditions.''

3. Information Requirements for Foreign Banking Organizations With Combined U.S. Assets of $50 Billion or More

Under the proposal, a foreign banking organization with combined U.S. assets of $50 billion or more would have been required to submit key information regarding the results of its home-country stress test that included: a description of the types of risks included in the stress test; a description of the conditions or scenarios used in the stress test; a summary description of the methodologies used in the stress test; estimates of the foreign banking organization's projected financial and capital condition; and an explanation of the most significant causes for any changes in regulatory capital ratios.[147] One commenter suggested that, if a home-country supervisory authority applies robust stress tests broadly comparable to those in the United States, the stress-testing reporting

[145] The final rule also provides that if the foreign banking organization parent of the U.S. intermediate holding company has a subsidiary bank holding company or insured depository institution that was subject to the Board's stress-testing requirements prior to formation of the U.S. intermediate holding company, the subsidiary bank holding company or insured depository institution will continue to be subject to the applicable stress-testing requirements until September 30, 2017, after which time the stress testing requirements will be applied at the U.S. intermediate holding company level.

[146] For these purposes, the central bank may be the home country supervisor provided that the requirements of the rule are met.

[147] Commenters asked for clarification as to whether the reporting requirements apply to foreign banking organizations with total consolidated assets of $50 billion or more, or foreign banking organizations with U.S. assets of $50 billion or more. The final rule clarifies that the reporting requirements apply only to foreign banking organizations with combined U.S. assets of $50 billion or more.

requirements should be waived for those foreign banking organizations.

Commenters also asked for clarification on the exact reporting requirements, particularly if the level of detail will be similar to that for the Board's FR Y–14A. Some commenters suggested that the Board tailor the proposal's information reporting requirements for foreign banking organizations with combined U.S. assets of $50 billion or more to match the content and timing of home country stress testing. Commenters also asserted that if home-country stress tests are concluded on a different cycle than the Board's preferred cycle, the Board should accept results from the home-country stress tests at a reasonable interval after their completion. Similarly, commenters argued that if home-country stress tests do not produce the Board's requested metrics, the Board should accept alternative metrics, provided they are generally effective in depicting the soundness of the institution.

The proposed reporting requirements were intended to provide the Board with important information regarding stress test results. The stress test report serves an important purpose, as it allows the Board better to understand the capital adequacy of the foreign banking organization, its ability to support its U.S. operations, and the nature of the home-country stress testing regime. The Board clarifies that it does not presently intend to require a specific reporting form for a foreign banking organization to use to report its company-run stress test results and has attempted to minimize any conflict with home-country standards regarding the timing and content of a foreign banking organization's stress tests. Further, the Board has not mandated a specific timeline for when a stress test must be conducted. By January 5 of each year, the foreign banking organization must report on its stress-testing activities and results, but that report can consist of the most recent stress test conducted by the home-country supervisor or the foreign banking organization, provided that the foreign banking organization is subject to capital stress testing at least annually.

If a foreign banking organization is subject to slightly different home country stress testing metrics, the Board would expect to accept those metrics, provided they included sufficient information on the foreign banking organization's losses, revenues, changes in expected loan losses, income, and capital under stressed conditions. While a foreign banking organization could choose to provide the same type of information as included on the FR Y–14A to report on the results of its stress test, a more abbreviated report could satisfy the foreign banking organization's requirements. Thus, these requirements should not conflict with the timing or content of the foreign banking organization's home country stress-testing requirements.

Commenters also requested that the Board take appropriate precautions to protect the confidentiality of information relating to home country stress-test results provided to the Board, including by treating all stress-test results as confidential supervisory information exempt from disclosure under the Freedom of Information Act and, if necessary, entering into confidentiality agreements with the foreign banking organization or its home-country regulators. According to these commenters, decisions regarding the extent of public disclosure of a foreign banking organization's stress tests results should lie solely with the home-country supervisor. In response, the Board notes that it would maintain the confidentiality of any information submitted to the Board with respect to stress-testing results in accordance with the Board's rules regarding availability of information.[148] The Board has no plans to disclose the results of foreign banking organization home-country stress tests.

4. Additional Information Required From a Foreign Banking Organization With U.S. Branches and Agencies That Are in an Aggregate Net Due From Position

Under the proposal, if the U.S. branches and agencies of a foreign banking organization were in a net due from position to the foreign bank parent or its foreign affiliates on an aggregate basis, calculated as the average daily position over the last stress test cycle (from October 1 of a given year through September 30 of the next year), the foreign banking organization would have been required to report additional information to the Board regarding its stress tests. The additional information would have included a more detailed description of the methodologies used in the stress test, detailed information regarding the organization's projected financial and capital position over the planning horizon, and any additional information that the Board deems necessary in order to evaluate the ability of the foreign banking organization to absorb losses in stressed conditions. As described in the proposal, the heightened information requirements reflect the greater risk to U.S. creditors and U.S. financial stability that may be posed by U.S. branches and agencies that serve as funding sources to their foreign parent. All foreign banking organizations with combined U.S. assets of $50 billion or more would have been required to provide this information by January 5 of each calendar year, unless extended by the Board in writing.

Commenters requested clarification on what additional information the Board would require to evaluate the ability of the foreign banking organization to absorb losses in stressed conditions. The exact additional information that the Board will require when the U.S. branch and agency network is in a net due from position to the foreign bank parent or its foreign affiliates will be determined on a case-by-case basis, accounting for the size, complexity, and business activities of the foreign banking organization and its U.S. operations. For instance, the Board may require additional information on particular portfolios or business lines located in the United States, or that have a significant connection to the foreign banking organization's U.S. operations. The Board expects that the information regarding a foreign banking organization's methodologies will include those employed to estimate losses, revenues, and changes in capital positions. Information must be provided for all elements of the stress tests, including loss estimation, revenue estimation, projections of the balance sheet and risk-weighted assets, and capital levels and ratios.

5. Supplemental Requirements for Foreign Banking Organizations With Combined U.S. Assets of $50 Billion or More That Do Not Comply With Stress-Testing Requirements

Under the proposal, if a foreign banking organization with combined U.S. assets of $50 billion or more did not meet the stress-test requirements above, the Board would have required its U.S. branches and agencies to meet an asset-maintenance requirement by maintaining eligible assets equal to 108 percent of third-party liabilities. The mechanics of this asset-maintenance requirement generally would align with the asset-maintenance requirements that may apply to U.S. branches and agencies under existing federal or state rules. In addition, the foreign banking organization would have been required to conduct an annual stress test of any U.S. subsidiary not held under a U.S. intermediate holding company (other than a section 2(h)(2) company). The stress test of such subsidiary could have

[148] *See* 12 CFR part 261; *see also* 5 U.S.C. 552(b).

been conducted separately or as part of an enterprise-wide stress test.[149]

In addition to the asset-maintenance requirement and the subsidiary-level stress testing requirement described above, the proposal would have permitted the Board to impose intragroup funding restrictions, or increased local liquidity requirements, on the U.S. branches and agencies of a foreign bank, as well as any U.S. subsidiary that is not part of a U.S. intermediate holding company. Under the proposal, if the Board determines that it should impose intragroup funding restrictions or increased local liquidity requirements as a result of failure to meet the Board's stress-testing requirements under this proposal, the Board would have provided the company with a notification no later than 30 days before the Board proposed to apply the funding restrictions or increase local liquidity requirements.

The proposal provided that the notification would include the basis for imposing the additional requirement. Within 14 calendar days of receipt of the notification, the proposal provided that the foreign banking organization could request in writing that the Board reconsider the requirement, including an explanation as to why the reconsideration should be granted. The Board would then have been required to respond in writing within 14 calendar days of receipt of the company's request. The proposal also would have required the foreign banking organization to report summary information about the results of the stress test to the Board on an annual basis.

Several commenters argued that none of the supplemental requirements should be mandatory, and that the Board should retain discretion to impose penalties based on financial stability risks or a deficiency in home country standards or reporting. Commenters further suggested that before imposing any penalties based on inadequacy of home country standards, the Federal Reserve should discuss the penalties with home-country supervisors. In addition, commenters asserted that the Federal Reserve should ensure that any penalties do not conflict with requirements prescribed by state supervisors or home-country supervisors. Commenters argued that asset-maintenance requirements are typically under the jurisdiction of the state or the OCC, that the Board should eliminate the requirement or coordinate with states and the OCC, and that unilateral Board action may result in confusion and cause undue burden.

The Board believes that the mandatory asset-maintenance requirement is a clear, transparent regulatory response to companies that are unable to satisfy the stress-test requirements. In most cases, the Board anticipates that it would notify home-country supervisors and any relevant state and federal banking supervisors before the requirement is imposed. As requested by commenters, the Board notes that the consolidated branch and agency asset-maintenance requirements would not pre-empt state asset-maintenance requirements or otherwise affect the ability of state supervisors to impose asset-maintenance requirements. Given that asset-maintenance requirements are a common supervisory tool, the use of an asset-maintenance requirement is unlikely to conflict with requirements prescribed by a home-country supervisor.

Commenters also addressed the proposed calculation of the asset-maintenance requirement. One commenter suggested that the Board should not calculate asset maintenance on an aggregate basis for all U.S. branches and agencies of a foreign bank. According to the commenter, this approach fails to consider that eligible assets may reside in different state jurisdictions or experience varying rates of deterioration.

The final rule retains the proposed calculation of the asset-maintenance requirement. The Board believes that applying an asset-maintenance requirement on a consolidated branch or agency basis is appropriate in this context because this asset-maintenance requirement is triggered by the adequacy of the foreign banking organization's stress testing on a consolidated basis, not because of weaknesses at a particular U.S. branch or agency. The requirements of this rule do not supersede any existing asset-maintenance requirements that U.S. branches and agencies of a foreign bank may be subject to, and U.S. branches and agencies of a foreign bank will be expected to meet both the requirements under the final rule and any state-level asset-maintenance requirements.

Other commenters suggested that the Board expand the definition of eligible assets for asset-maintenance requirements, either to include all assets that are permitted for investment purposes by a U.S. bank, with appropriate haircuts to adequately reflect any credit risk associated with such assets, or to align the assets with the assets available under the liquidity coverage ratio. Under the proposal, definitions of the terms ''eligible assets'' and ''liabilities'' were generally consistent with the definitions of the terms ''eligible assets'' and ''liabilities requiring cover'' used in the New York State Superintendent's regulations.[150] The proposal, and final rule, align the definition of ''eligible assets'' with the asset-maintenance requirements that are familiar to many U.S. branches and agencies under existing rules.

The final rule makes minor adjustments to the proposed definition of eligible assets. In the proposal, eligible assets would have excluded amounts due from the home office, other offices and affiliates, including income accrued but uncollected on such amounts; however, the definition would have permitted the Board to treat amounts due from other offices or affiliates located in the United States as eligible assets. The Board has determined that such treatment would be inappropriate, and has removed that provision from the final rule. In addition, the Board has removed the specific valuation rules for Brady Bonds and precious metals. If Brady Bonds qualify as marketable debt securities, they would be valued at their principal amount or market value, whichever is lower, consistent with the final rule. Precious metals and other assets not listed in the final rule would be valued as recorded on the general ledger (reduced by the amount of any specifically allocated reserves held in the United States and recorded on the general ledger of the U.S. branch or U.S. agency in connection with such assets).

One commenter suggested that the asset-maintenance provisions, taken together with intragroup funding restrictions and local liquidity requirements, may be too onerous and seriously limit the types of assets or investments that an institution could hold. The commenter also argued that the timing for intragroup funding restrictions may be impractical if serious liquidity issues exist. Under the final rule, the Board has retained discretion in applying the intragroup funding restrictions and local liquidity requirements, and, on a case-by-case basis, will assess whether the interaction of these additional restrictions with the asset-maintenance requirement would have results other that the intended increase in safety and soundness. The Board has modified the notice provisions to provide that, if a company requests a reconsideration of the requirement, the Board will respond in writing to the company's request for

[149] The final rule clarifies that the Board must approve an enterprise-wide stress test in order for it to satisfy the requirements of this section.

[150] 3 NYCRR § 322.3–322.4.

reconsideration prior to applying the condition, but not necessarily within 14 days.

The preamble to the foreign proposal raised a question as to whether the Board should consider conducting supervisory loss estimates on the U.S. branches and agencies of large foreign banking organizations, or whether the Board should consider requiring a foreign banking organization to conduct internal stress tests of its U.S. branches and agencies. Several commenters suggested that the Board should not impose additional requirements on the U.S. branches and agencies of a foreign banking organization, asserting that such additional collection would be burdensome but not meaningful. However, one commenter argued that the Board should gather data from such networks similar to the data gathered from U.S. bank holding companies, conduct supervisory loss estimates, and require foreign banking organizations to conduct internal stress test on their U.S. branch and agency networks to equalize the treatment with foreign-owned subsidiaries and also with U.S. banks.

The Board has decided against imposing such additional requirements at this time. U.S. branches and agencies do not hold capital separately from their parent foreign banking organization, and the losses on assets borne by the branch or agency would be due and payable by the parent. For these reasons, the branch would be required to make a number of assumptions that would reduce the utility of the analysis, and in the Board's view, the cost and burden to firms of conducting the test would therefore at present outweigh the supervisory benefit.

6. Stress-Test Requirements for Foreign Banking Organizations With Total Consolidated Assets of More Than $50 Billion But Combined U.S. Assets of Less Than $50 Billion

Under the proposal, a foreign banking organization with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion would have been required to be subject to a home-country stress testing regime that satisfied the same requirements applied to foreign banking organizations with combined U.S. assets of $50 billion or more. Under these requirements, the home-country stress testing regime would have been required to include an annual supervisory capital stress test or an annual supervisory evaluation and review of a company-run stress test, and requirements for governance and controls of the stress-testing practices by relevant management and the board of directors (or equivalent thereof) of the company. A foreign banking organization with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion would have been required to meet the minimum standards set by its home-country supervisor with respect to the stress tests.

If a foreign banking organization did not meet the stress-testing standards above, the Board would require the foreign banking organization's U.S. branches and agencies, as applicable, to maintain eligible assets equal to 105 percent of third-party liabilities, calculated on an aggregate basis. As discussed in the proposal, the Board would require a 105 percent asset-maintenance requirement (instead of the 108 percent requirement applied to foreign banking organizations with combined U.S. assets of $50 billion or more) in light of the more limited risks to U.S. financial stability posed by foreign banking organizations with combined U.S. assets of less than $50 billion as compared to risks posed by foreign banking organizations with a larger presence. In addition, the proposal would have required the foreign banking organization to conduct an annual stress test of its U.S. subsidiaries (other than a section 2(h)(2) company).[151] The company would have been required to report high-level summary information about the results of such stress test to the Board on an annual basis.

Some commenters argued that the asset-maintenance requirement should be parallel regardless of the size of the institution. The final rule maintains the 105 percent requirement for an institution with a smaller U.S. presence in light of its smaller systemic footprint. In addition, the final rule clarifies that an enterprise-wide stress test conducted by a foreign banking organization is subject to the Board's approval to the extent it is used to satisfy the U.S. subsidiary stress testing requirement.

7. Stress-Test Requirements for Other Foreign Banking Organizations and Foreign Savings and Loan Holding Companies With Total Consolidated Assets of More Than $10 Billion

The Dodd-Frank Act requires the Board to impose stress-testing requirements on its regulated entities (including bank holding companies, state member banks, and savings and loan holding companies) with total consolidated assets of more than $10 billion.[152] The proposal would apply the stress-testing requirements to foreign banking organizations with total consolidated assets of more than $10 billion but less than $50 billion and foreign savings and loan holding companies with total consolidated assets of more than $10 billion that were consistent with the requirements described in section III.F.7 above applicable to foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion.

Commenters suggested that the Board should not apply stress-testing requirements for smaller foreign banking organizations with less than $50 billion in combined U.S. assets, asserting that these entities may not pose any risks to U.S. financial stability. These commenters argued that the Board has discretion to use U.S. assets rather than global assets as the threshold for application under section 165(i)(2) of the Dodd-Frank Act. One commenter also suggested that the Board exempt foreign banking organizations from jurisdictions where similar banks are subject to consolidated supervision.

Section 165(i)(2) of the Dodd-Frank Act states that ''financial companies that have total consolidated assets of more than $10,000,000,000 and are regulated by a primary Federal financial regulatory agency shall conduct annual stress tests.'' Accordingly, the final rule applies to these companies. However, foreign banking organizations with less than $50 billion in combined U.S. assets are likely to pose more limited risks to U.S. financial stability than larger companies. Accordingly, the Board sought in the final rule to minimize any undue regulatory burden on those companies by allowing them to use a home-country stress test, while ensuring that the requirements meet the statutory requirements of the Dodd-Frank Act. Responses to other comments received on these standards are discussed in section III.F.6 of this preamble.

G. Debt-to-Equity Limits for Foreign Banking Organizations

Section 165(j) provides that the Board must require a foreign banking organization to maintain a debt-to-equity ratio of no more than 15-to-1 if the Council determines that such company poses a ''grave threat'' to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the

[151] As described above in section IV.B of this preamble, a foreign banking organization with U.S. non-branch assets of less than $50 billion would not be required to form a U.S. intermediate holding company.

[152] Section 165(i)(2) of the Dodd-Frank Act; 12 U.S.C. 5363(i)(2).

risk that such foreign banking organization poses to the financial stability of the United States.[153] The Board is required to promulgate regulations to establish procedures and timelines for compliance with section 165(j).[154]

The proposal would have implemented the debt-to-equity ratio limitation with respect to a foreign banking organization by applying a 15-to-1 debt-to-equity limitation on its U.S. intermediate holding company and any U.S. subsidiary not organized under a U.S. intermediate holding company (other than a section 2(h)(2) company), and a 108 percent asset-maintenance requirement on its U.S. branches and agencies as an equivalent to a debt-to-equity limitation. Unlike the other provisions of this proposal, the debt-to-equity ratio limitation would be effective on the effective date of the final rule.

Under the proposal, a foreign banking organization for which the Council has made the determination described above would receive written notice from the Council, or from the Board on behalf of the Council, of the Council's determination. The proposal provided that within 180 calendar days from the date of receipt of the notice, the foreign banking organization must come into compliance with the proposal's requirements. The proposal would have permitted a company subject to the debt-to-equity ratio requirement to request up to two extension periods of 90 days each to come into compliance with this requirement. The proposal provided that requests for an extension of time to comply must be received in writing by the Board not less than 30 days prior to the expiration of the existing time period for compliance and must provide information sufficient to demonstrate that the company has made good faith efforts to comply with the debt-to-equity ratio requirement and that each extension would be in the public interest. In the event that an extension of time is requested, the Board would review the request in light of the relevant facts and circumstances, including the extent of the company's efforts to comply with the ratio and whether the extension would be in the public interest. A company would no longer be subject to the debt-to-equity ratio requirement of this subpart as of the date it receives notice of a determination by the Council that the company no longer poses a grave threat to the financial stability of the United States and that the imposition of a debt-to-equity requirement is no longer necessary.

Consistent with comments received on the domestic proposal, some commenters argued that the substitution of ''total liabilities'' for the statutory term ''debt'' would be inappropriate, especially as applied to insurance companies. As discussed in detail in section III.D of this preamble, the Board chose to define ''debt'' and ''equity'' on the basis of ''total liabilities'' and ''total equity capital'' included in a company's report of financial condition. Commenters also noted that the section 165(j) debt-to-equity ratio is not based on any applicable international standard and could prompt reciprocal measures from foreign governments, and one commenter stated that the debt-to-equity limits should be integrated into a single equity standard applied at the parent level. Two of the commenters argued that the Board should consult with home country regulators before imposing the debt-to-equity ratio. One commenter asserted that asset-maintenance requirements are typically the jurisdiction of the state or the OCC, and that the Board's asset-maintenance requirement was unnecessary.

While the Board recognizes that section 165(j) debt-to-equity ratio is not an international standard, it is a standard that is required by the Dodd-Frank Act and is imposed after the Council (and not the Board) makes the ''grave threat'' determination. Were the Council to make such a determination regarding a foreign banking organization, the Board expects that it or the Council would notify the appropriate home country regulator before the expiration of the compliance period. For the reasons described above in section IV.F of this preamble, the Board believes that the asset-maintenance requirement is an appropriate standard. The Board is adopting the debt-to-equity requirements as proposed.

V. Administrative Law Matters

A. Regulatory Flexibility Act

The Board has considered the potential impact of the final rule on small companies in accordance with the Regulatory Flexibility Act (5 U.S.C. 603(b)). Based on its analysis and for the reasons stated below, the Board believes that the final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a final regulatory flexibility analysis.

Under regulations issued by the Small Business Administration (''SBA''), a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $500 million or less (a small banking organization).[155] The final rule establishes risk committee and company-run stress test requirements for bank holding companies and foreign banking organizations with total consolidated assets of more than $10 billion and establishes enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more. Companies that are subject to the final rule therefore substantially exceed the $175 or $500 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations.[156]

The Board did not receive any comments on the proposed rules regarding their impact on small entities. In light of the foregoing, the Board does not believe that the final rule would have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number is 7100–0350. The Board reviewed the final rule under the authority delegated to the Board by OMB. The Board did not receive any specific comments on the PRA; however, most commenters expressed concern about the amount of burden imposed by the requirements of the rule.

The final rule contains requirements subject to the PRA. The reporting requirements are found in sections 252.122(b)(1)(iii); 252.132(a), (b), and (d); 252.143(a), (b), and (c); 252.144(a), (b), and (d); 252.145(a); 252.146(c)(1)(iii); 252.153(a)(3); 252.153(c)(3); 252.153(d); 252.154(a), (b), and (c); 252.157(b); 252.158(c)(1);

[153] The Act requires that, in making its determination, the Council must take into consideration the criteria in Dodd-Frank Act sections 113(a) and (b) and any other risk-related factors that the Council deems appropriate. The statute expressly exempts any federal home loan bank from the debt to equity ratio requirement. *See* 12 U.S.C. 5366(j)(1).

[154] 12 U.S.C. 5366(j)(3).

[155] 13 CFR 121.201.

[156] The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the $50 billion asset threshold for the application of certain of the enhanced standards. *See* 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

252.158(c)(2); and 252.158(d)(1)(ii).[157] The recordkeeping requirements are found in sections 252.34(e)(3), 252.34(f), 252.34(h), 252.35(a)(7), 252.153(e)(5), 252.156(e), 252.156(g), and 252.157(a)(7). The disclosure requirements are found in section 252.153(e)(5). These information collection requirements would implement section 165 of the Dodd-Frank Act, as mentioned in the Abstract below.

The reporting requirements in sections 252.153(b)(2) and 252.153(e)(5) will be addressed in a separate **Federal Register** notice at a later date.

Comments are invited on:

(a) Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

(b) The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202–395–5806, Attention, Agency Desk Officer.

Proposed Revisions, With Extension, to the Following Information Collection

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY (Enhanced Prudential Standards).

Agency Form Number: Reg YY.

OMB Control Number: 7100–0350.

Frequency of Response: Annual, semiannual, quarterly, and on occasion.

Affected Public: Businesses or other for-profit.

Respondents: State member banks, U.S. bank holding companies, savings and loan holding companies, nonbank financial companies, foreign banking organizations, U.S. intermediate holding companies, foreign saving and loan holding companies, and foreign nonbank financial companies supervised by the Board.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to implement enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more. The enhanced prudential standards include risk-based and leverage capital requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), stress test requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability.

Reporting Requirements

Section 252.122(b)(1)(iii) (formerly section 252.264(b)(2) in the proposed rule) would require, unless the Board otherwise determines in writing, a foreign banking organization with total consolidated assets of more than $10 billion but less than $50 billion or a foreign savings and loan holding company with total consolidated assets of $10 billion or more that does not meet the home-country stress testing standards set forth in the rule to report on an annual basis a summary of the results of the stress test to the Board that includes a description of the types of risks included in the stress test, a description of the conditions or scenarios used in the stress test, a summary description of the methodologies used in the stress test, estimates of aggregate losses, pre-provision net revenue, total loan loss provisions, net income before taxes and pro forma regulatory capital ratios required to be computed by the home-country supervisor of the foreign banking organization or foreign savings and loan holding company and any other relevant capital ratios, and an explanation of the most significant causes for any changes in regulatory capital ratios.

Section 252.132(a) would require a foreign banking organization with a class of stock (or similar interest) that is publicly traded and total consolidated assets of at least $10 billion but less than $50 billion, must, on an annual basis, certify to the Board that it maintains a committee of its global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof) that (1) oversees the risk management policies of the combined U.S. operations of the foreign banking organization and (2) includes at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.

Section 252.132(b) would require the certification to be filed on an annual basis with the Board concurrently with the Annual Report of Foreign Banking Organizations (FR Y–7; OMB No. 7100–0297).

Section 252.132(d) would require that if a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

Section 252.143(a) would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion to certify to the Board that it meets capital adequacy standards on a consolidated basis established by its home-country supervisor that are consistent with the Basel Capital Framework. Home country capital adequacy standards that are consistent with the Basel Capital Framework include all minimum risk-based capital ratios, any minimum leverage ratio, and all restrictions based on any applicable capital buffers set forth in Basel III, each as applicable and as implemented in accordance with the Basel III, including any transitional provisions set forth

[157] Most of the recordkeeping requirements for Subpart D pertaining to the Liquidity Requirements have been addressed in the Funding and Liquidity Risk Management Guidance (FR 4198; OMB No. 7100–0326). Only new recordkeeping requirements are being addressed with this final rulemaking.

therein. In the event that a home-country supervisor has not established capital adequacy standards that are consistent with the Basel Capital Framework, the foreign banking organization must demonstrate to the satisfaction of the Board that it would meet or exceed capital adequacy standards on a consolidated basis that are consistent with the Basel Capital Framework were it subject to such standards.

Section 252.143(b) would require a foreign banking organization with total consolidated assets of $50 billion or more to provide to the Board reports relating to its compliance with the capital adequacy measures concurrently with filing the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q; OMB No. 7100–0125).

Section 252.143(c) would require that if a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions, including risk-based or leverage capital requirements, relating to the activities or business operations of the U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

Section 252.144(a) would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion to, on an annual basis, certify to the Board that it maintains a committee of its global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof) that (1) oversees the risk management policies of the combined U.S. operations of the foreign banking organization and (2) includes at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.

Section 252.144(b) would require the certification to be filed on an annual basis with the Board concurrently with its FR Y–7.

Section 252.144(d) would require that if a foreign banking organization does not satisfy the requirements of that section, the Board may impose requirements, conditions, or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition, or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

Section 252.145(a) (formerly section 252.231(a) in the proposed rule) would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion to report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the foreign banking organization or the combined U.S. operations of the foreign banking organization.

Section 252.146(c)(1)(iii) would require, unless the Board otherwise determines in writing, a foreign banking organization with total consolidated assets of more than $50 billion but combined U.S. assets of less than $50 billion that does not meet does not meet the home-country stress testing standards set forth in the rule to report on an annual basis a summary of the results of the stress test to the Board that includes a description of the types of risks included in the stress test, a description of the conditions or scenarios used in the stress test, a summary description of the methodologies used in the stress test, estimates of aggregate losses, pre-provision net revenue, total loan loss provisions, net income before taxes and pro forma regulatory capital ratios required to be computed by the home-country supervisor of the foreign banking organization and any other relevant capital ratios, and an explanation of the most significant causes for any changes in regulatory capital ratios.

Section 252.153(a)(3) (formerly section 252.203(b) in the proposed rule) would require that within 30 days of establishing or designating a U.S. intermediate holding company, a foreign banking organization with U.S. non-branch assets of $50 billion or more would provide to the Board (1) a description of the U.S. intermediate holding company, including its name, location, corporate form, and organizational structure; (2) a certification that the U.S. intermediate holding company meets the requirements of this subpart; and (3) any other information that the Board determines is appropriate.

Section 252.153(c)(3) (formerly section 252.202(b) in the proposed rule) would require a foreign banking organization with U.S. non-branch assets of $50 billion or more that submits a request to establish or designate multiple U.S. intermediate holding companies to be submitted to the Board 180 days before the foreign banking organization forms a U.S. intermediate holding company. A request not to transfer any ownership interest in a subsidiary must be submitted to the Board either 180 days before the foreign banking organization acquires the ownership interest in such U.S. subsidiary, or in a shorter period of time if permitted by the Board. The request must include a description of why the request should be granted and any other information the Board may require.

Section 252.153(d) [158] would require a foreign banking organization that, as of June 30, 2014, has U.S. non-branch assets of $50 billion or more to submit an implementation plan to the Board by January 1, 2015, unless that time is accelerated or extended by the Board. An implementation plan must contain (1) a list of all U.S. subsidiaries controlled by the foreign banking organization setting forth the ownership interest in each subsidiary and an organizational chart showing the ownership hierarchy; (2) for each U.S. subsidiary that is a section 2(h)(2) company or a debts previously contracted in good faith (DPC) branch subsidiary, the name, asset size, and a description of why the U.S. subsidiary qualifies as a section 2(h)(2) or a DPC

[158] This reporting requirement was added in response to a public comment received asking for further clarity on the requirements and process for foreign banking organizations to re-organize its U.S. legal entities under one intermediate holding company.

branch subsidiary; (3) for each U.S. subsidiary for which the foreign banking organization expects to request an exemption from the requirement to transfer all or a portion of its ownership interest in the subsidiary to the U.S. intermediate holding company, the name, asset size, and a description of the reasons why the foreign banking organization intends to request that the Board grant it an exemption from the U.S. intermediate holding company requirement; (4) a projected timeline for the transfer by the foreign banking organization of its ownership interest in U.S. subsidiaries to the U.S. intermediate holding company, and quarterly pro forma financial statements for the U.S. intermediate holding company, including pro forma regulatory capital ratios, beginning December 31, 2015, to January 1, 2018; (5) a projected timeline for, and description of, all planned capital actions or strategies for capital accretion that will facilitate the U.S. intermediate holding company's compliance with the risk-based and leverage capital requirements set forth in paragraph (e)(2) of this section; (6) a description of the risk-management practices of the combined U.S. operations of the foreign banking organization and a description of how the foreign banking organization and U.S. intermediate holding company will come into compliance with the final rule's requirements; and (7) a description of the current liquidity stress testing practices of the U.S. operations of the foreign banking organization and a description of how the foreign banking organization and U.S. intermediate holding company will come into compliance with the final rule's requirements.

If a foreign banking organization plans to reduce its U.S. non-branch assets below $50 billion for four consecutive quarters prior to July 1, 2016, the foreign banking organization may submit a plan that describes how it intends to reduce its U.S. non-branch assets below $50 billion and any other information the Board determines is appropriate.

The Board may require a foreign banking organization that meets or exceeds the threshold for application of this section after June 30, 2014, to submit an implementation plan containing the information described above if the Board determines that an implementation plan is appropriate for such foreign banking organization.

Section 252.154(a) would require a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more to certify to the Board that it meets capital adequacy standards on a consolidated basis established by its home-country supervisor that are consistent with the regulatory capital framework published by the Basel Committee on Banking Supervision, as amended from time to time (Basel Capital Framework). Home country capital adequacy standards that are consistent with the Basel Capital Framework include all minimum risk-based capital ratios, any minimum leverage ratio, and all restrictions based on any applicable capital buffers set forth in Basel III, each as applicable and as implemented in accordance with the Basel III, including any transitional provisions set forth therein. In the event that a home-country supervisor has not established capital adequacy standards that are consistent with the Basel Capital Framework, the foreign banking organization must demonstrate to the satisfaction of the Board that it would meet or exceed capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework were it subject to such standards.

Section 252.154(b) would require a foreign banking organization with total consolidated assets of $50 billion or more to provide to the Board reports relating to its compliance with the capital adequacy measures concurrently with filing the FR Y–7Q.

Section 252.154(c) would require that if a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions relating to the activities or business operations of the U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

Section 252.157(b) (formerly section 252.226(c) in the proposed rule) would require a foreign banking organization with combined U.S. assets of $50 billion or more to make available to the Board, in a timely manner, the results of any liquidity internal stress tests and establishment of liquidity buffers required by regulators in its home jurisdiction. The report required under this paragraph must include the results of its liquidity stress test and liquidity buffer, if required by the laws or regulations implemented in the home jurisdiction, or expected under supervisory guidance.

Section 252.158(c)(1) (formerly section 252.263(b)(1) in the proposed rule) would require a foreign banking organization with combined U.S. assets of $50 billion or more to report to the Board by January 5 of each calendar year, unless such date is extended by the Board, summary information about its stress-testing activities and results, including the following quantitative and qualitative information (1) a description of the types of risks included in the stress test; (2) a description of the conditions or scenarios used in the stress test; (3) a summary description of the methodologies used in the stress test; (4) estimates of (a) aggregate losses, (b) pre-provision net revenue, (c) total loan loss provisions, (d) net income before taxes, and (e) pro forma regulatory capital ratios required to be computed by the home-country supervisor of the foreign banking organization and any other relevant capital ratios; and (5) an explanation of the most significant causes for any changes in regulatory capital ratios.

Section 252.158(c)(2) (formerly section 252.263(b)(2) in the proposed rule) would require that if, on a net basis, the U.S. branches and agencies of a foreign banking organization with combined U.S. assets of $50 billion or more provide funding to the foreign banking organization's non-U.S. offices and non-U.S. affiliates, calculated as the average daily position over a stress test cycle for a given year, the foreign banking organization must report the following information to the Board by January 5 of each calendar year, unless such date is extended by the Board (1) a detailed description of the methodologies used in the stress test, including those employed to estimate losses, revenues, and changes in capital positions; (2) estimates of realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, if applicable; and loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by material sub-portfolio; and (3) any additional information that the Board requests.

Section 252.158(d)(1)(ii) (formerly section 252.263(c)(2) in the proposed rule) would require a foreign banking organization with combined U.S. assets

of $50 billion or more that does not meet the home-country stress testing standards set forth in the rule and provide requested information to the Board must to the extent that a foreign banking organization has not formed a U.S. intermediate holding company, conduct an annual stress test of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions and report on an annual basis a summary of the results of that stress test of this section to the Board that includes the qualitative and quantitative information required for home country supervisory stress and any other information specified by the Board.

Recordkeeping Requirements

Section 252.34(e)(3) (formerly section 252.61 in the proposed rule) would require a bank holding company with total consolidated assets of $50 billion or more to adequately document its methodology for making cash flow projections and the included assumptions and submit such documentation to the risk committee.

Section 252.34(f) (formerly section 252.58 in the proposed rule) would require a bank holding company with total consolidated assets of $50 billion or more to establish and maintain a contingency funding plan that sets out the company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance. The company must update the contingency funding plan at least annually, and when changes to market and idiosyncratic conditions warrant. The contingency funding plan must include specified quantitative elements.

The contingency funding plan must include an event management process that sets out the bank holding company's procedures for managing liquidity during identified liquidity stress events. The contingency funding plan must include procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the company's capital structure, risk profile, complexity, activities, and size.

Section 252.34(h)(1) (formerly section 252.60(a) in the proposed rule) would require a bank holding company with total consolidated assets of $50 billion or more to establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties and sets forth minimum standards for those procedures.

Section 252.34(h)(2) (formerly section 252.60(b) in the proposed rule) would require a bank holding company with total consolidated assets of $50 billion or more to establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

Section 252.34(h)(3) (formerly section 252.60(c) in the proposed rule) would require a bank holding company with total consolidated assets of $50 billion or more to establish and maintain procedures for monitoring intraday liquidity risk exposure. These procedures must address how the management of the bank holding company will (1) monitor and measure expected daily gross liquidity inflows and outflows, (2) manage and transfer collateral to obtain intraday credit, (3) identify and prioritize time-specific obligations so that the bank holding company can meet these obligations as expected and settle less critical obligations as soon as possible, (4) control the issuance of credit to customers where necessary, and (5) consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the bank holding company's overall liquidity needs.

Section 252.35(a)(7) (formerly section 252.56(c) in the proposed rule) would require a bank holding company with total consolidated assets of $50 billion or more to establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time. The bank holding company would establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the final rule's stress testing requirements. The bank holding company would maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to liquidity stress testing.

Section 252.156(e) (formerly section 252.228 in the proposed rule) would require a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain a contingency funding plan for its combined U.S. operations that sets out the foreign banking organization's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the capital structure, risk profile, complexity, activities, size, and the established liquidity risk tolerance for the combined U.S. operations. The foreign banking organization must update the contingency funding plan for its combined U.S. operations at least annually, and when changes to market and idiosyncratic conditions warrant. The contingency funding plan must include specified quantitative elements.

The contingency funding plan for a foreign banking organization's combined U.S. operations must include an event management process that sets out the foreign banking organization's procedures for managing liquidity during identified liquidity stress events for the combined U.S. operations as set forth in the final rule. The contingency funding plan must include procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the capital structure, risk profile, complexity, activities, and size of the foreign banking organization and its combined U.S. operations.

Section 252.156(g)(1) (formerly section 252.230(a) in the proposed rule) would require a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain policies and procedures to monitor assets that have been or are available to be pledged as collateral in connection with transactions to which entities in its U.S. operations are counterparties. These policies and procedures must provide that the foreign banking organization (1) calculates all of the collateral positions for its combined U.S. operations on a weekly basis (or more frequently, as directed by the Board), specifying the value of pledged assets relative to the amount of security required under the relevant contracts and the value of unencumbered assets available to be pledged, (2) monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure, (3) monitors shifts in the foreign banking organization's funding patterns, including shifts between intraday, overnight, and term pledging of collateral, and (4) tracks operational and timing requirements associated with accessing collateral at

its physical location (for example, the custodian or securities settlement system that holds the collateral).

Section 252.156(g)(2) (formerly section 252.230(b) in the proposed rule) would require a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines for its combined U.S. operations, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

Section 252.156(g)(3) (formerly section 252.230(c) in the proposed rule) would require a foreign banking organization with combined U.S. assets of $50 billion or more to establish and maintain procedures for monitoring intraday liquidity risk exposure for its combined U.S. operations. These procedures must address how the management of the combined U.S. operations will (1) monitor and measure expected daily inflows and outflows, (2) maintain, manage and transfer collateral to obtain intraday credit, (3) identify and prioritize time-specific obligations so that the foreign banking organizations can meet these obligations as expected and settle less critical obligations as soon as possible, (4) control the issuance of credit to customers where necessary, and (5) consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the overall liquidity needs of the combined U.S. operations.

Section 252.157(a)(7) (formerly section 252.230(c) in the proposed rule) would require a foreign banking organization with combined U.S. assets of $50 billion or more, within its combined U.S. operations and its enterprise-wide risk management, to establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time. The foreign banking organization must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this section. The foreign banking organization must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to the liquidity stress testing of its combined U.S. operations.

Recordkeeping and Disclosure Requirements

Section 252.153(e)(5) (formerly section 252.262 in the proposed rule) would require a U.S. intermediate holding company to comply with the requirements of this subparts E and F of this part and any successor regulation in the same manner as a bank holding company.

Other Changes

The following subparts have been renumbered, no content has been changed. ''Subpart F—Supervisory Stress Test Requirements for Covered Companies'' is now ''Subpart E—Supervisory Stress Test Requirements for U.S. Bank Holding Companies with $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board.'' ''Subpart G—Company-Run Stress Test Requirements for Covered Companies'' is now ''Subpart F—Company-Run Stress Test Requirements for U.S. Bank Holding Companies with $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board.'' ''Subpart H—Company-Run Stress Test Requirements for Banking Organizations With Total Consolidated Assets Over $10 Billion That Are Not Covered Companies'' is now ''Subpart B—Company-Run Stress Test Requirements for Certain U.S. Banking Organizations with Total Consolidated Assets Over $10 Billion and less than $50 Billion.''

Estimated Paperwork Burden

Estimated Burden per Response:

Reporting Burden

Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More But Combined U.S. Assets of Less Than $50 Billion

Section 252.143(a) and (b)—1 hour.
Section 252.143(c)—10 hours.
Section 252.144(a) and (b)—1 hour.
Section 252.144(d)—10 hours.
Section 252.145(a)—50 hours.
Section 252.146(c)(1)(iii)—80 hours.

Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of $50 Billion or More

Section 252.154(a) and (b)—1 hour.
Section 252.154(c)—10 hours.
Section 252.157(b)—40 hours.
Section 252.158(c)(1)—40 hours.
Section 252.158(c)(2)—40 hours.
Section 252.158(d)(1)(ii)—80 hours.

Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More and U.S. Non-Branch Assets of $50 Billion or More

Section 252.153(a)(3)—20 hours.
Section 252.153(c)(3)—160 hours.
Section 252.153(d)—Initial setup 750 hours.

Foreign Banking Organizations and Foreign Savings and Loan Holding Companies With Total Consolidated Assets Over $10 Billion and Less Than $50 Billion

Section 252.122(b)(1)(iii)—80 hours.

Publicly Traded Foreign Banking Organizations With Total Consolidated Assets Equal to or Greater Than $10 Billion and Less Than $50 Billion

Section 252.132(a) and (b)—1 hour.
Section 252.132(d)—10 hours.

Recordkeeping Burden

Bank Holding Companies With Total Consolidated Assets of $50 Billion or More

Sections 252.34(e)(3), 252.34(f), 252.34(h), and 252.35(a)(7)—200 hours (Initial setup 160 hours).

Intermediate Holding Companies

Section 252.153(e)(5)—40 hours (Initial setup 280 hours).

Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of $50 Billion or More

Sections 252.156(e), 252.156(g), and 252.157(a)(7)—200 hours (Initial setup 160 hours).

Disclosure Burden

Intermediate Holding Companies

Section 252.153(e)(5)—80 hours (Initial setup 200 hours).

Number of respondents: 24 U.S. bank holding companies with total consolidated assets of $50 billion or more, 46 U.S. bank holding companies with total consolidated assets over $10 billion and less than $50 billion, 21 state member banks with total consolidated assets over $10 billion, 39 savings and loan holding companies with total consolidated assets over $10 billion, 24 foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more, 17 U.S. intermediate holding companies, and 102 foreign banking organizations with total consolidated assets of more than $10 billion and combined U.S. assets of less than $50 billion.

Current estimated annual burden: 59,320 hours (48,080 hours for initial

setup and 11,240 hours for ongoing compliance).

Proposed revisions only estimated annual burden: 59,226 hours (31,990 hours for initial setup and 27,236 hours for ongoing compliance).

Total estimated annual burden: 118,546 hours (80,070 hours for initial setup and 38,476 hours for ongoing compliance).

C. Plain Language

Section 722 of the Gramm-Leach Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invited comment on whether the proposed rule was written plainly and clearly, or whether there were ways the Board could make the rule easier to understand. The Board received no comments on these matters and believes that the final rule is written plainly and clearly.

List of Subjects in 12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System further amends part 252, as amended on March 11, 2014, at 79 FR 13498, effective April 15, 2014, as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 1. The authority citation for part 252 is revised to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5362, 5365, 5367, and 5368.

■ 2. Subpart A is added to read as follows:

Subpart A—General Provisions

Sec.
252.1 Authority and purpose.
252.2 Definitions.
252.3 Reservation of authority.
252.4 Nonbank financial companies supervised by the Board.

Subpart A—General Provisions

§ 252.1 Authority and purpose.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (the Board) under sections 162, 165, 167, and 168 of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376, 1423–1432, 12 U.S.C. 5362, 5365, 5367, and 5368); section 9 of the Federal Reserve Act (12 U.S.C. 321–338a); section 5(b) of the Bank Holding Company Act (12 U.S.C. 1844(b)); section 10(g) of the Home Owners' Loan Act, as amended (12 U.S.C. 1467a(g)); sections 8 and 39 of the Federal Deposit Insurance Act (12 U.S.C. 1818(b) and 1831p–1); the International Banking Act (12 U.S.C. 3101 *et seq.*); the Foreign Bank Supervision Enhancement Act (12 U.S.C. 3101 note); and 12 U.S.C. 3904, 3906–3909, and 4808.

(b) *Purpose.* This part implements certain provisions of section 165 of the Dodd-Frank Act (12 U.S.C. 5365), which require the Board to establish enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more, nonbank financial companies supervised by the Board, and certain other companies.

§ 252.2 Definitions.

Unless otherwise specified, the following definitions apply for purposes of this part:

(a) *Affiliate* has the same meaning as in section 2(k) of the Bank Holding Company Act (12 U.S.C. 1841(k)) and section 225.2(a) of the Board's Regulation Y (12 CFR 225.2(a)).

(b) *Applicable accounting standards* means U.S. generally accepted accounting principles, international financial reporting standards, or such other accounting standards that a company uses in the ordinary course of its business in preparing its consolidated financial statements.

(c) *Bank holding company* has the same meaning as in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)) and section 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

(d) *Board* means the Board of Governors of the Federal Reserve System.

(e) *Combined U.S. operations* of a foreign banking organization means:

(1) Its U.S. branches and agencies, if any; and

(2)(i) If the foreign banking organization has established a U.S. intermediate holding company, the U.S. intermediate holding company and the subsidiaries of such U.S. intermediate holding company; or

(ii) If the foreign banking organization has not established a U.S. intermediate holding company, the U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company, if applicable), and subsidiaries of such U.S. subsidiaries.

(f) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(g) *Control* has the same meaning as in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)), and the terms *controlled* and *controlling* shall be construed consistently with the term *control.*

(h) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(i) *DPC branch subsidiary* means any subsidiary of a U.S. branch or a U.S. agency acquired, or formed to hold assets acquired, in the ordinary course of business and for the sole purpose of securing or collecting debt previously contracted in good faith by that branch or agency.

(j) *Foreign banking organization* has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)), provided that if the top-tier foreign banking organization is incorporated in or organized under the laws of any State, the foreign banking organization shall not be treated as a foreign banking organization for purposes of this part.

(k) *FR Y–7Q* means the Capital and Asset Report for Foreign Banking Organizations reporting form.

(l) *FR Y–7* means the Annual Report of Foreign Banking Organizations reporting form.

(m) *FR Y–9C* means the Consolidated Financial Statements for Holding Companies reporting form.

(n) *Nonbank financial company supervised by the Board* means a company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(o) *Non-U.S. affiliate* means any affiliate of a foreign banking organization that is incorporated or organized in a country other than the United States.

(p) *Publicly traded* means an instrument that is traded on:

(1) Any exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a non-U.S. national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question, meaning that there are enough independent bona fide offers to buy and sell so that a sales price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined promptly and a trade can be settled at such price within a reasonable time period conforming with trade custom.

(3) A company can rely on its determination that a particular non-U.S.-based securities exchange provides a liquid two-way market unless the Board determines that the exchange does not provide a liquid two-way market.

(q) *Section 2(h)(2) company* has the same meaning as in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2)).

(r) *State* means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(s) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(t) *U.S. agency* has the same meaning as the term ''agency'' in section 211.21(b) of the Board's regulation K (12 CFR 211.21(b)).

(u) *U.S. branch* has the same meaning as the term ''branch'' in section 211.21(e) of the Board's Regulation K (12 CFR 211.21(e)).

(v) *U.S. branches and agencies* means the U.S. branches and U.S. agencies of a foreign banking organization.

(w) *U.S. government agency* means an agency or instrumentality of the United States whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States.

(x) *U.S. government-sponsored enterprise* means an entity originally established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the United States.

(y) *U.S. intermediate holding company* means the top-tier U.S. company that is required to be established pursuant to § 252.153.

(z) *U.S. subsidiary* means any subsidiary that is incorporated in or organized under the laws of the United States or in any State, commonwealth, territory, or possession of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the North Mariana Islands, the American Samoa, Guam, or the United States Virgin Islands.

§ 252.3 Reservation of authority.

(a) *In general.* Nothing in this part limits the authority of the Board under any provision of law or regulation to impose on any company additional enhanced prudential standards, including, but not limited to, additional risk-based or leverage capital or liquidity requirements, leverage limits, limits on exposures to single counterparties, risk-management requirements, stress tests, or other requirements or restrictions the Board deems necessary to carry out the purposes of this part or Title I of the Dodd-Frank Act, or to take supervisory or enforcement action, including action to address unsafe and unsound practices or conditions, or violations of law or regulation.

(b) *Modifications or extensions of this part.* The Board may extend or accelerate any compliance date of this part if the Board determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Board will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with this part, and the actions the company is taking to come into compliance with this part.

§ 252.4 Nonbank financial companies supervised by the Board.

(a) *U.S. nonbank financial companies supervised by the Board.* The Board will establish enhanced prudential standards for a nonbank financial company supervised by the Board that is incorporated in or organized under the laws of the United States or any State (U.S. nonbank financial company) by rule or order. In establishing such standards, the Board will consider the factors set forth in sections 165(a)(2) and (b)(3) of the Dodd-Frank Act, including:

(1) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the U.S. nonbank financial company;

(2) The degree to which the U.S. nonbank financial company is already regulated by one or more primary financial regulatory agencies; and

(3) Any other risk-related factor that the Board determines is appropriate.

(b) *Foreign nonbank financial companies supervised by the Board.* The Board will establish enhanced prudential standards for a nonbank financial company supervised by the Board that is organized or incorporated in a country other than the United States (foreign nonbank financial company) by rule or order. In establishing such standards, the Board will consider the factors set forth in sections 165(a)(2), (b)(2), and (b)(3) of the Dodd-Frank Act, including:

(1) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the foreign nonbank financial company;

(2) The extent to which the foreign nonbank financial company is subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority; and

(3) Any other risk-related factor that the Board determines is appropriate.

* * * * *

■ 3. Subpart C is added to read as follows:

Subpart C—Risk Committee Requirement for Publicly Traded Bank Holding Companies With Total Consolidated Assets Equal to or Greater Than $10 Billion and Less Than $50 Billion

Sec.
252.20 [Reserved].
252.21 Applicability.
252.22 Risk committee requirement for publicly traded bank holding companies with total consolidated assets of $10 billion or more.

Subpart C—Risk Committee Requirement for Publicly Traded Bank Holding Companies With Total Consolidated Assets of $10 Billion or Greater and Less Than $50 Billion

§ 252.20 [Reserved].

§ 252.21 Applicability.

(a) *General applicability.* Subject to the initial applicability provisions of paragraph (c) of this section, a bank holding company with any class of stock that is publicly traded must comply with the risk-committee requirements set forth in this subpart beginning on the first day of the ninth quarter following the later of the date on which its total consolidated assets equal or exceed $10 billion and the date on which any class of its stock becomes publicly traded.

(b) *Total consolidated assets.* Total consolidated assets of a bank holding company for purposes of this subpart are equal to its consolidated assets, calculated based on the average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on its FR Y–9C. If the bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, total consolidated assets means the average of its total consolidated assets, as reported on the FR Y–9C, for the most recent quarter or consecutive quarters, as applicable. Total consolidated assets are measured on the as-of date of the most recent FR Y–9C used in the calculation of the average.

(c) *Initial applicability provisions.* A bank holding company that, as of June 30, 2014, has total consolidated assets of $10 billion or more and has a class of stock that is publicly traded must comply with the requirements of this subpart beginning on July 1, 2015.

(d) *Cessation of requirements.* A bank holding company will remain subject to the requirements of this subpart until the earlier of the date on which:

(1) Its reported total consolidated assets on the FR Y–9C are below $10 billion for each of four consecutive calendar quarters;

(2) It becomes subject to the requirements of subpart D of this part; and

(3) It ceases to have a class of stock that is publicly traded.

§ 252.22 Risk committee requirement for publicly traded bank holding companies with total consolidated assets of $10 billion or more.

(a) *Risk committee.* A bank holding company with any class of stock that is publicly traded and total consolidated assets of $10 billion or more must maintain a risk committee that approves and periodically reviews the risk-management policies of its global operations and oversees the operation of its global risk-management framework.

(b) *Risk-management framework.* The bank holding company's global risk-management framework must be commensurate with its structure, risk profile, complexity, activities, and size and must include:

(1) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for its global operations; and

(2) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(i) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies for its global operations;

(ii) Processes and systems for establishing managerial and employee responsibility for risk management;

(iii) Processes and systems for ensuring the independence of the risk-management function; and

(iv) Processes and systems to integrate risk management and associated controls with management goals and its compensation structure for its global operations.

(c) *Corporate governance requirements.* The risk committee must:

(1) Have a formal, written charter that is approved by the bank holding company's board of directors.

(2) Meet at least quarterly, and otherwise as needed, and fully document and maintain records of its proceedings, including risk-management decisions.

(d) *Minimum member requirements.* The risk committee must:

(1) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms; and

(2) Be chaired by a director who:

(i) Is not an officer or employee of the bank holding company and has not been an officer or employee of the bank holding company during the previous three years;

(ii) Is not a member of the immediate family, as defined in section 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(3)), of a person who is, or has been within the last three years, an executive officer of the bank holding company, as defined in section 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)); and

(iii)(A) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S–K (17 CFR 229.407(a)), if the bank holding company has an outstanding class of securities traded on an exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) (national securities exchange); or

(B) Would qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the bank holding company does not have an outstanding class of securities traded on a national securities exchange.

■ 4. Subpart D is added to read as follows:

Subpart D—Enhanced Prudential Standards for Bank Holding Companies With Total Consolidated Assets of $50 Billion or More

Sec.
252.30 Scope.
252.31 Applicability.
252.32 Risk-based and leverage capital and stress test requirements.
252.33 Risk-management and risk committee requirements.
252.34 Liquidity risk-management requirements.
252.35 Liquidity stress testing and buffer requirements.

Subpart D—Enhanced Prudential Standards for Bank Holding Companies With Total Consolidated Assets of $50 Billion or More

§ 252.30 Scope.

This subpart applies to bank holding companies with total consolidated assets of $50 billion or more. Total consolidated assets of a bank holding company are equal to the consolidated assets of the bank holding company, as calculated in accordance with § 252.31(b).

§ 252.31 Applicability.

(a) *General applicability.* Subject to the initial applicability provisions of paragraphs (c) and (e) of this section, a bank holding company must comply with the risk-management and risk-committee requirements set forth in § 252.33 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 252.34 and 252.35 beginning on the first day of the fifth quarter following the date on which its total consolidated assets equal or exceed $50 billion.

(b) *Total consolidated assets.* Total consolidated assets of a bank holding company for purposes of this subpart are equal to its consolidated assets, calculated based on the average of the bank holding company's total consolidated assets in the four most recent quarters as reported quarterly on the FR Y–9C. If the bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, total consolidated assets means the average of its total consolidated assets, as reported on the FR Y–9C, for the most recent quarter or consecutive quarters, as applicable. Total consolidated assets are measured on the as-of date of the most recent FR Y–9C used in the calculation of the average.

(c) *Initial applicability.* A bank holding company that, as of June 30, 2014, has total consolidated assets of

$50 billion or more, as calculated according to paragraph (b) of this section, must comply with the risk-management and risk-committee requirements set forth in § 252.33 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 252.34 and 252.35, beginning on January 1, 2015.

(d) *Cessation of requirements.* Except as provided in paragraph (e) of this section, a bank holding company is subject to the risk-management and risk committee requirements set forth in § 252.33 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 252.34 and 252.35 until its reported total consolidated assets on the FR Y–9C are below $50 billion for each of four consecutive calendar quarters.

(e) *Applicability for bank holding companies that are subsidiaries of foreign banking organizations.* In the event that a bank holding company that has total consolidated assets of $50 billion or more is controlled by a foreign banking organization, such bank holding company is subject to the risk-management and risk committee requirements set forth in § 252.33 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 252.34 and 252.35 beginning on January 1, 2015 and ending on June 30, 2016. Beginning on July 1, 2016, the U.S. intermediate holding company established or designated by the foreign banking organization must comply with the risk-management and risk committee requirements set forth in § 252.153(e)(3) and the liquidity risk-management and liquidity stress test requirements set forth in § 252.153(e)(4).

§ 252.32 Risk-based and leverage capital and stress test requirements.

A bank holding company with total consolidated assets of $50 billion or more must comply with, and hold capital commensurate with the requirements of, any regulations adopted by the Board relating to capital planning and stress tests, in accordance with the applicability provisions set forth therein.

§ 252.33 Risk-management and risk committee requirements.

(a) *Risk committee*—(1) *General.* A bank holding company with total consolidated assets of $50 billion or more must maintain a risk committee that approves and periodically reviews the risk-management policies of the bank holding company's global operations and oversees the operation of the bank holding company's global risk-management framework. The risk committee's responsibilities include liquidity risk-management as set forth in § 252.34(b).

(2) *Risk-management framework.* The bank holding company's global risk-management framework must be commensurate with its structure, risk profile, complexity, activities, and size and must include:

(i) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for its global operations; and

(ii) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(A) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies for its global operations;

(B) Processes and systems for establishing managerial and employee responsibility for risk management;

(C) Processes and systems for ensuring the independence of the risk-management function; and

(D) Processes and systems to integrate risk management and associated controls with management goals and its compensation structure for its global operations.

(3) *Corporate governance requirements.* The risk committee must:

(i) Have a formal, written charter that is approved by the bank holding company's board of directors;

(ii) Be an independent committee of the board of directors that has, as its sole and exclusive function, responsibility for the risk-management policies of the bank holding company's global operations and oversight of the operation of the bank holding company's global risk-management framework;

(iii) Report directly to the bank holding company's board of directors;

(iv) Receive and review regular reports on not less than a quarterly basis from the bank holding company's chief risk officer provided pursuant to paragraph (b)(3)(ii) of this section; and

(v) Meet at least quarterly, or more frequently as needed, and fully document and maintain records of its proceedings, including risk-management decisions.

(4) *Minimum member requirements.* The risk committee must:

(i) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(ii) Be chaired by a director who:

(A) Is not an officer or employee of the bank holding company and has not been an officer or employee of the bank holding company during the previous three years;

(B) Is not a member of the immediate family, as defined in section 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(3)), of a person who is, or has been within the last three years, an executive officer of the bank holding company, as defined in section 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)); and

(C)(*1*) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S–K (17 CFR 229.407(a)), if the bank holding company has an outstanding class of securities traded on an exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) (national securities exchange); or

(*2*) Would qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the bank holding company does not have an outstanding class of securities traded on a national securities exchange.

(b) *Chief risk officer*—(1) *General.* A bank holding company with total consolidated assets of $50 billion or more must appoint a chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) *Responsibilities.* (i) The chief risk officer is responsible for overseeing:

(A) The establishment of risk limits on an enterprise-wide basis and the monitoring of compliance with such limits;

(B) The implementation of and ongoing compliance with the policies and procedures set forth in paragraph (a)(2)(i) of this section and the development and implementation of the processes and systems set forth in paragraph (a)(2)(ii) of this section; and

(C) The management of risks and risk controls within the parameters of the company's risk control framework, and monitoring and testing of the company's risk controls.

(ii) The chief risk officer is responsible for reporting risk-management deficiencies and emerging risks to the risk committee and resolving risk-management deficiencies in a timely manner.

(3) *Corporate governance requirements.* (i) The bank holding company must ensure that the compensation and other incentives provided to the chief risk officer are consistent with providing an objective assessment of the risks taken by the bank holding company; and

(ii) The chief risk officer must report directly to both the risk committee and chief executive officer of the company.

§ 252.34 Liquidity risk-management requirements.

(a) *Responsibilities of the board of directors*—(1) *Liquidity risk tolerance.* The board of directors of a bank holding company with total consolidated assets of $50 billion or more must:

(i) Approve the acceptable level of liquidity risk that the bank holding company may assume in connection with its operating strategies (liquidity risk tolerance) at least annually, taking into account the bank holding company's capital structure, risk profile, complexity, activities, and size; and

(ii) Receive and review at least semi-annually information provided by senior management to determine whether the bank holding company is operating in accordance with its established liquidity risk tolerance.

(2) *Liquidity risk-management strategies, policies, and procedures.* The board of directors must approve and periodically review the liquidity risk-management strategies, policies, and procedures established by senior management pursuant to paragraph (c)(1) of this section.

(b) *Responsibilities of the risk committee.* The risk committee (or a designated subcommittee of such committee composed of members of the board of directors) must approve the contingency funding plan described in paragraph (f) of this section at least annually, and must approve any material revisions to the plan prior to the implementation of such revisions.

(c) *Responsibilities of senior management*—(1) *Liquidity risk.* (i) Senior management of a bank holding company with total consolidated assets of $50 billion or more must establish and implement strategies, policies, and procedures designed to effectively manage the risk that the bank holding company's financial condition or safety and soundness would be adversely affected by its inability or the market's perception of its inability to meet its cash and collateral obligations (liquidity risk). The board of directors must approve the strategies, policies, and procedures pursuant to paragraph (a)(2) of this section.

(ii) Senior management must oversee the development and implementation of liquidity risk measurement and reporting systems, including those required by this section and § 252.35.

(iii) Senior management must determine at least quarterly whether the bank holding company is operating in accordance with such policies and procedures and whether the bank holding company is in compliance with this section and § 252.35 (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition warrant), and establish procedures regarding the preparation of such information.

(2) *Liquidity risk tolerance.* Senior management must report to the board of directors or the risk committee regarding the bank holding company's liquidity risk profile and liquidity risk tolerance at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(3) *Business lines or products.* (i) Senior management must approve new products and business lines and evaluate the liquidity costs, benefits, and risks of each new business line and each new product that could have a significant effect on the company's liquidity risk profile. The approval is required before the company implements the business line or offers the product. In determining whether to approve the new business line or product, senior management must consider whether the liquidity risk of the new business line or product (under both current and stressed conditions) is within the company's established liquidity risk tolerance.

(ii) Senior management must review at least annually significant business lines and products to determine whether any line or product creates or has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each strategy or product is within the company's established liquidity risk tolerance.

(4) *Cash-flow projections.* Senior management must review the cash-flow projections produced under paragraph (e) of this section at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the bank holding company warrant) to ensure that the liquidity risk is within the established liquidity risk tolerance.

(5) *Liquidity risk limits.* Senior management must establish liquidity risk limits as set forth in paragraph (g) of this section and review the company's compliance with those limits at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(6) *Liquidity stress testing.* Senior management must:

(i) Approve the liquidity stress testing practices, methodologies, and assumptions required in § 252.35(a) at least quarterly, and whenever the bank holding company materially revises its liquidity stress testing practices, methodologies or assumptions;

(ii) Review the liquidity stress testing results produced under § 252.35(a) at least quarterly;

(iii) Review the independent review of the liquidity stress tests under § 252.34(d) periodically; and

(iv) Approve the size and composition of the liquidity buffer established under § 252.35(b) at least quarterly.

(d) *Independent review function.* (1) A bank holding company with total consolidated assets of $50 billion or more must establish and maintain a review function that is independent of management functions that execute funding to evaluate its liquidity risk management.

(2) The independent review function must:

(i) Regularly, but no less frequently than annually, review and evaluate the adequacy and effectiveness of the company's liquidity risk management processes, including its liquidity stress test processes and assumptions;

(ii) Assess whether the company's liquidity risk-management function complies with applicable laws, regulations, supervisory guidance, and sound business practices; and

(iii) Report material liquidity risk management issues to the board of directors or the risk committee in writing for corrective action, to the extent permitted by applicable law.

(e) *Cash-flow projections.* (1) A bank holding company with total consolidated assets of $50 billion or more must produce comprehensive cash-flow projections that project cash flows arising from assets, liabilities, and off-balance sheet exposures over, at a minimum, short- and long-term time horizons. The bank holding company must update short-term cash-flow projections daily and must update longer-term cash-flow projections at least monthly.

(2) The bank holding company must establish a methodology for making cash-flow projections that results in projections that:

(i) Include cash flows arising from contractual maturities, intercompany transactions, new business, funding

renewals, customer options, and other potential events that may impact liquidity;

(ii) Include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures;

(iii) Identify and quantify discrete and cumulative cash flow mismatches over these time periods; and

(iv) Include sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the bank holding company and include analyses by business line, currency, or legal entity as appropriate.

(3) The bank holding company must adequately document its methodology for making cash flow projections and the included assumptions and submit such documentation to the risk committee.

(f) *Contingency funding plan.* (1) A bank holding company with total consolidated assets of $50 billion or more must establish and maintain a contingency funding plan that sets out the company's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance. The company must update the contingency funding plan at least annually, and when changes to market and idiosyncratic conditions warrant.

(2) *Components of the contingency funding plan*—(i) *Quantitative assessment.* The contingency funding plan must:

(A) Identify liquidity stress events that could have a significant impact on the bank holding company's liquidity;

(B) Assess the level and nature of the impact on the bank holding company's liquidity that may occur during identified liquidity stress events;

(C) Identify the circumstances in which the bank holding company would implement its action plan described in paragraph (f)(2)(ii)(A) of this section, which circumstances must include failure to meet any minimum liquidity requirement imposed by the Board;

(D) Assess available funding sources and needs during the identified liquidity stress events;

(E) Identify alternative funding sources that may be used during the identified liquidity stress events; and

(F) Incorporate information generated by the liquidity stress testing required under § 252.35(a) of this subpart.

(ii) *Liquidity event management process.* The contingency funding plan must include an event management process that sets out the bank holding company's procedures for managing liquidity during identified liquidity stress events. The liquidity event management process must:

(A) Include an action plan that clearly describes the strategies the company will use to respond to liquidity shortfalls for identified liquidity stress events, including the methods that the company will use to access alternative funding sources;

(B) Identify a liquidity stress event management team that would execute the action plan described in paragraph (f)(2)(ii)(A) of this section;

(C) Specify the process, responsibilities, and triggers for invoking the contingency funding plan, describe the decision-making process during the identified liquidity stress events, and describe the process for executing contingency measures identified in the action plan; and

(D) Provide a mechanism that ensures effective reporting and communication within the bank holding company and with outside parties, including the Board and other relevant supervisors, counterparties, and other stakeholders.

(iii) *Monitoring.* The contingency funding plan must include procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the company's capital structure, risk profile, complexity, activities, and size.

(iv) *Testing.* The bank holding company must periodically test:

(A) The components of the contingency funding plan to assess the plan's reliability during liquidity stress events;

(B) The operational elements of the contingency funding plan, including operational simulations to test communications, coordination, and decision-making by relevant management; and

(C) The methods the bank holding company will use to access alternative funding sources to determine whether these funding sources will be readily available when needed.

(g) *Liquidity risk limits*—(1) *General.* A bank holding company with total consolidated assets of $50 billion or more must monitor sources of liquidity risk and establish limits on liquidity risk, including limits on:

(i) Concentrations in sources of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and as applicable, other forms of liquidity risk;

(ii) The amount of liabilities that mature within various time horizons; and

(iii) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.

(2) *Size of limits.* Each limit established pursuant to paragraph (g)(1) of this section must be consistent with the company's established liquidity risk tolerance and must reflect the company's capital structure, risk profile, complexity, activities, and size.

(h) *Collateral, legal entity, and intraday liquidity risk monitoring.* A bank holding company with total consolidated assets of $50 billion or more must establish and maintain procedures for monitoring liquidity risk as set forth in this paragraph.

(1) *Collateral.* The bank holding company must establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties. These policies and procedures must provide that the bank holding company:

(i) Calculates all of its collateral positions on a weekly basis (or more frequently, as directed by the Board), specifying the value of pledged assets relative to the amount of security required under the relevant contracts and the value of unencumbered assets available to be pledged;

(ii) Monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts in the bank holding company's funding patterns, such as shifts between intraday, overnight, and term pledging of collateral; and

(iv) Tracks operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

(2) *Legal entities, currencies and business lines.* The bank holding company must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(3) *Intraday exposures.* The bank holding company must establish and maintain procedures for monitoring intraday liquidity risk exposure. These procedures must address how the management of the bank holding company will:

(i) Monitor and measure expected daily gross liquidity inflows and outflows;

(ii) Manage and transfer collateral to obtain intraday credit;

(iii) Identify and prioritize time-specific obligations so that the bank holding company can meet these obligations as expected and settle less critical obligations as soon as possible;

(iv) Manage the issuance of credit to customers where necessary; and

(v) Consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the bank holding company's overall liquidity needs.

§ 252.35 Liquidity stress testing and buffer requirements.

(a) *Liquidity stress testing requirement*—(1) *General.* A bank holding company with total consolidated assets of $50 billion or more must conduct stress tests to assess the potential impact of the liquidity stress scenarios set forth in paragraph (a)(3) on its cash flows, liquidity position, profitability, and solvency, taking into account its current liquidity condition, risks, exposures, strategies, and activities.

(i) The bank holding company must take into consideration its balance sheet exposures, off-balance sheet exposures, size, risk profile, complexity, business lines, organizational structure, and other characteristics of the bank holding company that affect its liquidity risk profile in conducting its stress test.

(ii) In conducting a liquidity stress test using the scenarios described in paragraphs (a)(3)(i) and (iii) of this section, the bank holding company must address the potential direct adverse impact of associated market disruptions on the bank holding company and incorporate the potential actions of other market participants experiencing liquidity stresses under the market disruptions that would adversely affect the bank holding company.

(2) *Frequency.* The liquidity stress tests required under paragraph (a)(1) of this section must be performed at least monthly. The Board may require the bank holding company to perform stress testing more frequently.

(3) *Stress scenarios.* (i) Each liquidity stress test conducted under paragraph (a)(1) of this section must include, at a minimum:

(A) A scenario reflecting adverse market conditions;

(B) A scenario reflecting an idiosyncratic stress event for the bank holding company; and

(C) A scenario reflecting combined market and idiosyncratic stresses.

(ii) The bank holding company must incorporate additional liquidity stress scenarios into its liquidity stress test, as appropriate, based on its financial condition, size, complexity, risk profile, scope of operations, or activities. The Board may require the bank holding company to vary the underlying assumptions and stress scenarios.

(4) *Planning horizon.* Each stress test conducted under paragraph (a)(1) of this section must include an overnight planning horizon, a 30-day planning horizon, a 90-day planning horizon, a one-year planning horizon, and any other planning horizons that are relevant to the bank holding company's liquidity risk profile. For purposes of this section, a ''planning horizon'' is the period over which the relevant stressed projections extend. The bank holding company must use the results of the stress test over the 30-day planning horizon to calculate the size of the liquidity buffer under paragraph (b) of this section.

(5) *Requirements for assets used as cash-flow sources in a stress test.* (i) To the extent an asset is used as a cash flow source to offset projected funding needs during the planning horizon in a liquidity stress test, the fair market value of the asset must be discounted to reflect any credit risk and market volatility of the asset.

(ii) Assets used as cash-flow sources during a planning horizon must be diversified by collateral, counterparty, borrowing capacity, and other factors associated with the liquidity risk of the assets.

(iii) A line of credit does not qualify as a cash flow source for purposes of a stress test with a planning horizon of 30 days or less. A line of credit may qualify as a cash flow source for purposes of a stress test with a planning horizon that exceeds 30 days.

(6) *Tailoring.* Stress testing must be tailored to, and provide sufficient detail to reflect, a bank holding company's capital structure, risk profile, complexity, activities, and size.

(7) *Governance*—(i) *Policies and procedures.* A bank holding company with total consolidated assets of $50 billion or more must establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time.

(ii) *Controls and oversight.* A bank holding company with total consolidated assets of $50 billion or more must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this section. The controls and oversight must ensure that each liquidity stress test appropriately incorporates conservative assumptions with respect to the stress scenario in paragraph (a)(3) of this section and other elements of the stress test process, taking into consideration the bank holding company's capital structure, risk profile, complexity, activities, size, business lines, legal entity or jurisdiction, and other relevant factors. The assumptions must be approved by the chief risk officer and be subject to the independent review under § 252.34(d) of this subpart.

(iii) *Management information systems.* The bank holding company must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to liquidity stress testing.

(b) *Liquidity buffer requirement.* (1) A bank holding company with total consolidated assets of $50 billion or more must maintain a liquidity buffer that is sufficient to meet the projected net stressed cash-flow need over the 30-day planning horizon of a liquidity stress test conducted in accordance with paragraph (a) of this section under each scenario set forth in paragraph (a)(3)(i) through (iii) of this section.

(2) *Net stressed cash-flow need.* The net stressed cash-flow need for a bank holding company is the difference between the amount of its cash-flow need and the amount of its cash flow sources over the 30-day planning horizon.

(3) *Asset requirements.* The liquidity buffer must consist of highly liquid assets that are unencumbered, as defined in paragraph (b)(3)(ii) of this section:

(i) *Highly liquid asset.* A highly liquid asset includes:

(A) Cash;

(B) Securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise; or

(C) Any other asset that the bank holding company demonstrates to the satisfaction of the Board:

(*1*) Has low credit risk and low market risk;

(*2*) Is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined

within one day and settled at that price within a reasonable time period conforming with trade custom; and

(*3*) Is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

(ii) *Unencumbered.* An asset is unencumbered if it:

(A) Is free of legal, regulatory, contractual, or other restrictions on the ability of such company promptly to liquidate, sell or transfer the asset; and

(B) Is either:

(*1*) Not pledged or used to secure or provide credit enhancement to any transaction; or

(*2*) Pledged to a central bank or a U.S. government-sponsored enterprise, to the extent potential credit secured by the asset is not currently extended by such central bank or U.S. government-sponsored enterprise or any of its consolidated subsidiaries.

(iii) *Calculating the amount of a highly liquid asset.* In calculating the amount of a highly liquid asset included in the liquidity buffer, the bank holding company must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(iv) *Diversification.* The liquidity buffer must not contain significant concentrations of highly liquid assets by issuer, business sector, region, or other factor related to the bank holding company's risk, except with respect to cash and securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise.

■ 5. Subpart L is added to read as follows:

Subpart L—Company-Run Stress Test Requirements for Foreign Banking Organizations and Foreign Savings and Loan Holding Companies With Total Consolidated Assets Over $10 Billion and Less Than $50 Billion

Sec.
252.120 Definitions.
252.121 Applicability.
252.122 Capital stress testing requirements.

Subpart L—Company-Run Stress Test Requirements for Foreign Banking Organizations and Foreign Savings and Loan Holding Companies With Total Consolidated Assets Over $10 Billion but Less Than $50 billion

§ 252.120 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Eligible asset* means any asset of the U.S. branch or U.S. agency held in the United States that is recorded on the general ledger of a U.S. branch or U.S. agency of the foreign banking organization (reduced by the amount of any specifically allocated reserves held in the United States and recorded on the general ledger of the U.S. branch or U.S. agency in connection with such assets), subject to the following exclusions and, for purposes of this definition, as modified by the rules of valuation set forth in paragraph (a)(2) of this section.

(1) The following assets do not qualify as eligible assets:

(i) Equity securities;

(ii) Any assets classified as loss at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff;

(iii) Accrued income on assets classified loss, doubtful, substandard or value impaired, at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff;

(iv) Any amounts due from the home office, other offices and affiliates, including income accrued but uncollected on such amounts;

(v) The balance from time to time of any other asset or asset category disallowed at the preceding examination or by direction of the Board for any other reason until the underlying reasons for the disallowance have been removed;

(vi) Prepaid expenses and unamortized costs, furniture and fixtures and leasehold improvements; and

(vii) Any other asset that the Board determines should not qualify as an eligible asset.

(2) The following rules of valuation apply:

(i) A marketable debt security is valued at its principal amount or market value, whichever is lower;

(ii) An asset classified doubtful or substandard at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff, is valued at 50 percent and 80 percent, respectively;

(iii) With respect to an asset classified value impaired, the amount representing the allocated transfer risk reserve that would be required for such exposure at a domestically chartered bank is valued at 0 and the residual exposure is valued at 80 percent; and

(iv) Real estate located in the United States and carried on the accounting records as an asset are valued at net book value or appraised value, whichever is less.

(b) *Foreign savings and loan holding company* means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a(a)) that is incorporated or organized under the laws of a country other than the United States.

(c) *Liabilities of all U.S. branches and agencies of a foreign banking organization* means all liabilities of all U.S. branches and agencies of the foreign banking organization, including acceptances and any other liabilities (including contingent liabilities), but excluding:

(1) Amounts due to and other liabilities to other offices, agencies, branches and affiliates of such foreign banking organization, including its head office, including unremitted profits; and

(2) Reserves for possible loan losses and other contingencies.

(d) *Pre-provision net revenue* means revenue less expenses before adjusting for total loan loss provisions.

(e) *Stress test cycle* has the same meaning as in subpart F of this part.

(f) *Total loan loss provisions* means the amount needed to make reserves adequate to absorb estimated credit losses, based upon management's evaluation of the loans and leases that the company has the intent and ability to hold for the foreseeable future or until maturity or payoff, as determined under applicable accounting standards.

§ 252.121 Applicability.

(a) *Applicability for foreign banking organizations with total consolidated assets of more than $10 billion but less than $50 billion*—(1) *General applicability.* Subject to the initial applicability provisions of paragraph (a)(3) of this section, a foreign banking organization must comply with the stress test requirements set forth in this section beginning on the first day of the ninth quarter following the date on which its total consolidated assets exceed $10 billion.

(2) *Total consolidated assets.* For purposes of this subpart, total consolidated assets of a foreign banking organization are equal to the average of the total assets for the two most recent periods as reported by the foreign banking organization on the FR Y–7. Total consolidated assets are measured on the as-of date of the most recent FR Y–7 used in the calculation of the average.

(3) *Initial applicability.* A foreign banking organization that, as of June 30, 2015, has total consolidated assets of $10 billion or more must comply with the requirements of this subpart beginning on July 1, 2016.

(4) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of this subpart until the earlier of the date on which:

(i) Its reported total consolidated assets on the FR Y–7 are below $10 billion for each of four consecutive calendar quarters; and

(ii) It becomes subject to the requirements of subpart N or subpart O of this subpart, as applicable.

(b) *Applicability for foreign savings and loan holding companies with total consolidated assets of more than $10 billion*—(1) *General.* A foreign savings and loan holding company must comply with the stress test requirements set forth in this section beginning on the first day of the ninth quarter following the date on which its total consolidated assets exceed $10 billion.

(2) *Total consolidated assets.* Total consolidated assets of a foreign savings and loan holding company for purposes of this subpart are equal to the average of total assets for the four most recent consecutive quarters as reported by the foreign savings and loan holding company on its applicable regulatory report. If the foreign savings and loan holding company has not filed four regulatory reports, total consolidated assets are equal to the average of total assets as reported for the most recent period or consecutive periods. Total consolidated assets are measured on the as-of date of the most recent regulatory reporting form used in the calculation of the average.

(3) *Cessation of requirements.* A foreign savings and loan holding company will remain subject to requirements of this subpart until the date on which the foreign savings and loan holding company's total consolidated assets on its applicable regulatory report are below $10 billion for each of four consecutive calendar quarters.

§ 252.122 Capital stress testing requirements.

(a) *In general.* (1) A foreign banking organization with total consolidated assets of more than $10 billion but less than $50 billion and a foreign savings and loan holding company with total consolidated assets of more than $10 billion must:

(i) Be subject on a consolidated basis to a capital stress testing regime by its home-country supervisor that meets the requirements of paragraph (a)(2) of this section; and

(ii) Conduct such stress tests or be subject to a supervisory stress test and meet any minimum standards set by its home-country supervisor with respect to the stress tests.

(2) The capital stress testing regime of a foreign banking organization or foreign savings and loan holding company's home-country supervisor must include:

(i) An annual supervisory capital stress test conducted by the relevant home-country supervisor or an annual evaluation and review by the home-country supervisor of an internal capital adequacy stress test conducted by the foreign banking organization; and

(ii) Requirements for governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof).

(b) *Additional standards.* (1) Unless the Board otherwise determines in writing, a foreign banking organization or a foreign savings and loan holding company that does not meet each of the requirements in paragraph (a)(1) and (2) of this section must:

(i) Maintain eligible assets in its U.S. branches and agencies that, on a daily basis, are not less than 105 percent of the average value over each day of the previous calendar quarter of the total liabilities of all branches and agencies operated by the foreign banking organization in the United States;

(ii) Conduct an annual stress test of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions; and

(iii) Report on an annual basis a summary of the results of the stress test to the Board that includes a description of the types of risks included in the stress test, a description of the conditions or scenarios used in the stress test, a summary description of the methodologies used in the stress test, estimates of aggregate losses, pre-provision net revenue, total loan loss provisions, net income before taxes and pro forma regulatory capital ratios required to be computed by the home-country supervisor of the foreign banking organization or foreign savings and loan holding company and any other relevant capital ratios, and an explanation of the most significant causes for any changes in regulatory capital ratios.

(2) An enterprise-wide stress test that is approved by the Board may meet the stress test requirement of paragraph (b)(1)(ii) of this section.

■ 6. Subpart M is added to read as follows:

Subpart M—Risk Committee Requirement for Publicly Traded Foreign Banking Organizations With Total Consolidated Assets Equal to or Greater Than $10 Billion and Less Than $50 Billion

Sec.
252.130 [Reserved].
252.131 Applicability.
252.132 Risk-committee requirements for foreign banking organizations with total consolidated assets of $10 billion or more but less than $50 billion.

Subpart M—Risk Committee Requirement for Publicly Traded Foreign Banking Organizations With Total Consolidated Assets of at Least $10 Billion but Less Than $50 Billion

§ 252.130 [Reserved].

§ 252.131 Applicability.

(a) *General applicability.* Subject to the initial applicability provisions of paragraph (c) of this section, a foreign banking organization with total consolidated assets of at least $10 billion but less than $50 billion and any class of stock (or similar interest) that is publicly traded must comply with the risk-committee requirements set forth in this subpart beginning on the first day of the ninth quarter following the later of the date on which its total consolidated assets equal or exceed $10 billion and the date on which any class of its stock (or similar interest) becomes publicly traded.

(b) *Total consolidated assets.* For purposes of this subpart, total consolidated assets of a foreign banking organization for purposes of this subpart are equal to the average of the total assets for the two most recent periods as reported by the foreign banking organization on the FR Y–7. Total consolidated assets are measured on the as-of date of the most recent FR Y–7 used in the calculation of the average.

(c) *Initial applicability.* A foreign banking organization that, as of June 30, 2015, has total consolidated assets of $10 billion or more and has a class of stock (or similar interest) that is publicly traded must comply with the risk-committee requirements of this section beginning on July 1, 2016.

(d) *Cessation of requirements.* A foreign banking organization will remain subject to the risk-committee requirements of this section until the earlier of the date on which: (i) its reported total consolidated assets on the FR Y–7 are below $10 billion for each of four consecutive calendar quarters; (ii) it becomes subject to the requirements of subpart N of this part; and (iii) it ceases to have a class of stock (or similar interest) that is publicly traded.

§ 252.132 Risk-committee requirements for foreign banking organizations with total consolidated assets of $10 billion or more but less than $50 billion.

(a) *U.S. risk committee certification.* A foreign banking organization with a class of stock (or similar interest) that is publicly traded and total consolidated assets of at least $10 billion but less than $50 billion, must, on an annual basis, certify to the Board that it maintains a committee of its global

board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof) that:

(1) Oversees the risk management policies of the combined U.S. operations of the foreign banking organization; and

(2) Includes at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(b) *Timing of certification.* The certification required under paragraph (a) of this section must be filed on an annual basis with the Board concurrently with the FR Y–7.

(c) *Responsibilities of the foreign banking organization.* The foreign banking organization must take appropriate measures to ensure that its combined U.S. operations implement the risk management policies overseen by the U.S. risk committee described in paragraph (a) of this section, and its combined U.S. operations provide sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out the responsibilities of this subpart.

(d) *Noncompliance with this section.* If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

■ 7. Subpart N is added to read as follows:

Subpart N—Enhanced Prudential Standards for Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More But Combined U.S. Assets of Less Than $50 Billion

Sec.

252.140 Scope.
252.141 [Reserved].
252.142 Applicability.
252.143 Risk-based and leverage capital requirements for foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion.
252.144 Risk-management and risk committee requirements for foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion.
252.145 Liquidity risk-management requirements for foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion.
252.146 Capital stress testing requirements for foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion.

Subpart N—Enhanced Prudential Standards for Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More But Combined U.S. Assets of Less Than $50 Billion

§ 252.140 Scope.

This subpart applies to foreign banking organizations with total consolidated assets of $50 billion or more, but combined U.S. assets of less than $50 billion. Total consolidated assets of a foreign banking organization are equal to the consolidated assets of the foreign banking organization, and combined U.S. assets of a foreign banking organization are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company, if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization, each as defined in section § 252.142(b).

§ 252.141 [Reserved].

§ 252.142 Applicability.

(a) *General applicability.* Subject to the initial applicability provisions in paragraph (c) of this section, a foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must comply with the capital requirements, risk-management and risk committee requirements, liquidity risk-management requirements, and the capital stress testing requirements set forth in this subpart beginning on the first day of the ninth quarter following the date on which its total consolidated assets equal or exceed $50 billion.

(b) *Asset measures*—(1) *Total consolidated assets.* Total consolidated assets of a foreign banking organization are equal to the consolidated assets of the foreign banking organization. For purposes of this subpart, ''total consolidated assets'' are calculated as the average of the foreign banking organization's total assets for the four most recent consecutive quarters as reported by the foreign banking organization on the FR Y–7Q. If the foreign banking organization has not filed the FR Y–7Q for the four most recent consecutive quarters, the Board shall use an average of the foreign banking organization's total consolidated assets reported on its most recent two FR Y–7Qs. Total consolidated assets are measured on the as-of date of the most recent FR Y–7Q used in the calculation of the average.

(2) *Combined U.S. assets.* Combined U.S. assets of a foreign banking organization are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company, if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization. For purposes of this subpart, combined U.S. assets are calculated as the average of the total combined assets of U.S. operations for the four most recent consecutive quarters as reported by the foreign banking organization on the FR Y–7Q, or, if the foreign banking organization has not reported this information on the FR Y–7Q for each of the four most recent consecutive quarters, the average of the combined U.S. assets for the most recent quarter or consecutive quarters as reported on the FR Y–7Q. Combined U.S. assets are measured on the as-of date of the most recent FR Y–7Q used in the calculation of the average.

(c) *Initial applicability.* A foreign banking organization that, as of June 30, 2015, has total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion must comply with the capital requirements, risk-management requirements, liquidity requirements, and the capital stress test requirements set forth in this subpart beginning on July 1, 2016.

(d) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements set forth in this subpart until its reported total assets on the FR Y–7Q are below $50 billion for each of four consecutive calendar quarters, or it becomes subject to the requirements of subpart O of this part.

§ 252.143 Risk-based and leverage capital requirements for foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion.

(a) *General requirements.* (1) A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must certify to the Board that it meets capital adequacy standards on a consolidated basis established by its home-country supervisor that are consistent with the regulatory capital framework published by the Basel Committee on Banking Supervision, as amended from time to time (Basel Capital Framework).

(i) For purposes of this paragraph, home-country capital adequacy standards that are consistent with the Basel Capital Framework include all minimum risk-based capital ratios, any minimum leverage ratio, and all restrictions based on any applicable capital buffers set forth in ''Basel III: A global regulatory framework for more resilient banks and banking systems'' (2010) (Basel III Accord), each as applicable and as implemented in accordance with the Basel III Accord, including any transitional provisions set forth therein.

(ii) [Reserved]

(2) In the event that a home-country supervisor has not established capital adequacy standards that are consistent with the Basel Capital Framework, the foreign banking organization must demonstrate to the satisfaction of the Board that it would meet or exceed capital adequacy standards on a consolidated basis that are consistent with the Basel Capital Framework were it subject to such standards.

(b) *Reporting.* A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must provide to the Board reports relating to its compliance with the capital adequacy measures described in paragraph (a) of this section concurrently with filing the FR Y–7Q.

(c) *Noncompliance with the Basel Capital Framework.* If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions, including risk-based or leverage capital requirements, relating to the activities or business operations of the U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

§ 252.144 Risk-management and risk committee requirements for foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion.

(a) *U.S. risk committee certification.* A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must, on an annual basis, certify to the Board that it maintains a committee of its global board of directors (or equivalent thereof), on a standalone basis or as part of its enterprise-wide risk committee (or equivalent thereof) that:

(1) Oversees the risk management policies of the combined U.S. operations of the foreign banking organization; and

(2) Includes at least one member having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(b) *Timing of certification.* The certification required under paragraph (a) of this section must be filed on an annual basis with the Board concurrently with the FR Y–7.

(c) *Responsibilities of the foreign banking organization.* The foreign banking organization must take appropriate measures to ensure that its combined U.S. operations implement the risk management policies overseen by the U.S. risk committee described in paragraph (a) of this section, and that its combined U.S. operations provide sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out the responsibilities of this subpart.

(d) *Noncompliance with this section.* If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition, or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

§ 252.145 Liquidity risk-management requirements for foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion.

(a) A foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion must report to the Board on an annual basis the results of an internal liquidity stress test for either the consolidated operations of the foreign banking organization or the combined U.S. operations of the foreign banking organization. Such liquidity stress test must be conducted consistently with the Basel Committee principles for liquidity risk management and must incorporate 30-day, 90-day, and one-year stress-test horizons. The ''Basel Committee principles for liquidity risk management'' means the document titled ''Principles for Sound Liquidity Risk Management and Supervision'' (September 2008) as published by the Basel Committee on Banking Supervision, as supplemented and revised from time to time.

(b) A foreign banking organization that does not comply with paragraph (a) of this section must limit the net aggregate amount owed by the foreign banking organization's non-U.S. offices and its non-U.S. affiliates to the combined U.S. operations to 25 percent or less of the third party liabilities of its combined U.S. operations, on a daily basis.

§ 252.146 Capital stress testing requirements for foreign banking organizations with total consolidated assets of $50 billion or more but combined U.S. assets of less than $50 billion.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Eligible asset* means any asset of the U.S. branch or U.S. agency held in the United States that is recorded on the general ledger of a U.S. branch or U.S.

agency of the foreign banking organization (reduced by the amount of any specifically allocated reserves held in the United States and recorded on the general ledger of the U.S. branch or U.S. agency in connection with such assets), subject to the following exclusions and, for purposes of this definition, as modified by the rules of valuation set forth in paragraph (a)(1)(ii) of this section.

(i) The following assets do not qualify as eligible assets:

(A) Equity securities;

(B) Any assets classified as loss at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff;

(C) Accrued income on assets classified loss, doubtful, substandard or value impaired, at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff;

(D) Any amounts due from the home office, other offices and affiliates, including income accrued but uncollected on such amounts;

(E) The balance from time to time of any other asset or asset category disallowed at the preceding examination or by direction of the Board for any other reason until the underlying reasons for the disallowance have been removed;

(F) Prepaid expenses and unamortized costs, furniture and fixtures and leasehold improvements; and

(G) Any other asset that the Board determines should not qualify as an eligible asset.

(ii) The following rules of valuation apply:

(A) A marketable debt security is valued at its principal amount or market value, whichever is lower;

(B) An asset classified doubtful or substandard at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff, is valued at 50 percent and 80 percent, respectively;

(C) With respect to an asset classified value impaired, the amount representing the allocated transfer risk reserve that would be required for such exposure at a domestically chartered bank is valued at 0 and the residual exposure is valued at 80 percent; and

(D) Real estate located in the United States and carried on the accounting records as an asset are valued at net book value or appraised value, whichever is less.

(2) *Liabilities of all U.S. branches and agencies of a foreign banking organization* means all liabilities of all U.S. branches and agencies of the foreign banking organization, including acceptances and any other liabilities (including contingent liabilities), but excluding:

(i) Amounts due to and other liabilities to other offices, agencies, branches and affiliates of such foreign banking organization, including its head office, including unremitted profits; and

(ii) Reserves for possible loan losses and other contingencies.

(3) *Pre-provision net revenue* means revenue less expenses before adjusting for total loan loss provisions.

(4) *Stress test cycle* has the same meaning as in subpart F of this part.

(5) *Total loan loss provisions* means the amount needed to make reserves adequate to absorb estimated credit losses, based upon management's evaluation of the loans and leases that the company has the intent and ability to hold for the foreseeable future or until maturity or payoff, as determined under applicable accounting standards.

(b) *In general.* (1) A foreign banking organization with total consolidated assets of more than $50 billion and combined U.S. assets of less than $50 billion must:

(i) Be subject on a consolidated basis to a capital stress testing regime by its home-country supervisor that meets the requirements of paragraph (b)(2) of this section; and

(ii) Conduct such stress tests or be subject to a supervisory stress test and meet any minimum standards set by its home-country supervisor with respect to the stress tests.

(2) The capital stress testing regime of a foreign banking organization's home-country supervisor must include:

(i) An annual supervisory capital stress test conducted by the foreign banking organization's home-country supervisor or an annual evaluation and review by the foreign banking organization's home-country supervisor of an internal capital adequacy stress test conducted by the foreign banking organization; and

(ii) Requirements for governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization;

(c) *Additional standards.* (1) Unless the Board otherwise determines in writing, a foreign banking organization that does not meet each of the requirements in paragraphs (b)(1) and (2) of this section must:

(i) Maintain eligible assets in its U.S. branches and agencies that, on a daily basis, are not less than 105 percent of the average value over each day of the previous calendar quarter of the total liabilities of all branches and agencies operated by the foreign banking organization in the United States;

(ii) Conduct an annual stress test of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions; and

(iii) Report on an annual basis a summary of the results of the stress test to the Board that includes a description of the types of risks included in the stress test, a description of the conditions or scenarios used in the stress test, a summary description of the methodologies used in the stress test, estimates of aggregate losses, pre-provision net revenue, total loan loss provisions, net income before taxes and pro forma regulatory capital ratios required to be computed by the home-country supervisor of the foreign banking organization and any other relevant capital ratios, and an explanation of the most significant causes for any changes in regulatory capital ratios.

(2) An enterprise-wide stress test that is approved by the Board may meet the stress test requirement of paragraph (c)(1)(ii) of this section.

■ 8. Subpart O is added to read as follows:

Subpart O—Enhanced Prudential Standards for Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of $50 Billion or More

Sec.

252.150 Scope.
252.151 [Reserved].
252.152 Applicability.
252.153 U.S. intermediate holding company requirement for foreign banking organizations with U.S. non-branch assets of $50 billion or more.
252.154 Risk-based and leverage capital requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.
252.155 Risk-management and risk committee requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.
252.156 Liquidity risk-management requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.
252.157 Liquidity stress testing and buffer requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.
252.158 Capital stress testing requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.

Subpart O—Enhanced Prudential Standards for Foreign Banking Organizations With Total Consolidated Assets of $50 Billion or More and Combined U.S. Assets of $50 Billion or More

§ 252.150 Scope.

(a) This subpart applies to foreign banking organizations with total consolidated assets of $50 billion or more and combined U.S. assets of $50 billion or more. Foreign banking organizations with combined U.S. assets of $50 billion or more and U.S. non-branch assets of $50 billion or more are also subject to the U.S. intermediate holding company requirement contained in § 252.153.

(b) Total consolidated assets of a foreign banking organization are equal to the consolidated assets of the foreign banking organization. Combined U.S. assets of a foreign banking organization are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company, if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization. U.S. non-branch assets are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company and DPC branch subsidiary, if applicable).

§ 252.151 [Reserved].

§ 252.152 Applicability.

(a) *General applicability.* Subject to the initial applicability provisions in paragraph (c) of this section, a foreign banking organization must:

(1) Comply with the requirements of this subpart (other than the U.S. intermediate holding company requirement set forth in § 252.153) beginning on the first day of the ninth quarter following the date on which its combined U.S. assets equal or exceed $50 billion; and

(2) Comply with the U.S. intermediate holding company requirement set forth in § 252.153 beginning on the first day of the ninth quarter following the date on which its U.S. non-branch assets equal or exceed $50 billion.

(b) *Asset measures*—(1) *Combined U.S. assets.* Combined U.S. assets of a foreign banking organization are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company, if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization. For purposes of this subpart, ''combined U.S. assets'' are calculated as the average of the total combined assets of U.S. operations for the four most recent consecutive quarters as reported by the foreign banking organization on the FR Y–7Q, or, if the foreign banking organization has not reported this information on the FR Y–7Q for each of the four most recent consecutive quarters, the average of the combined U.S. assets for the most recent quarter or consecutive quarters as reported on the FR Y–7Q. Combined U.S. assets are measured on the as-of date of the most recent FR Y–7Q used in the calculation of the average.

(2) *U.S. non-branch assets.* U.S. non-branch assets are equal to the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company and DPC branch subsidiary, if applicable).

(i) For purposes of this subpart, U.S. non-branch assets of a foreign banking organization are calculated as the average of the sum of the total consolidated assets of the top-tier U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company and DPC branch subsidiary) for the four most recent consecutive quarters, as reported to the Board on the FR Y–7Q, or, if the foreign banking organization has not reported this information on the FR Y–7Q for each of the four most recent consecutive quarters, the average for the most recent quarter or consecutive quarters as reported on the FR Y–7Q.

(ii) In calculating U.S. non-branch assets, a foreign banking organization must reduce its U.S. non-branch assets calculated under this paragraph by the amount corresponding to balances and transactions between a top-tier U.S. subsidiary and any other top-tier U.S. subsidiary (excluding any 2(h)(2) company or DPC branch subsidiary) to the extent such items are not already eliminated in consolidation.

(iii) U.S. non-branch assets are measured on the as-of date of the most recent FR Y–7Q used in the calculation of the average.

(c) *Initial applicability.* (1) A foreign banking organization that, as of June 30, 2015, has combined U.S. assets of $50 billion or more must comply with the requirements of this subpart, as applicable, beginning on July 1, 2016.

(2) A foreign banking organization that, as of June 30, 2015, has U.S. non-branch assets of $50 billion or more must comply with the requirements of this subpart beginning on July 1, 2016. In addition, the foreign banking organization must:

(i) By July 1, 2016, establish a U.S. intermediate holding company and transfer its entire ownership interest in any bank holding company subsidiary (if not designated as its U.S. intermediate holding company), any insured depository institution subsidiary, and U.S. subsidiaries holding at least 90 percent of its U.S. non-branch assets not owned by such subsidiary bank holding company or insured depository institution subsidiary, if any, as such assets are measured as of June 30, 2015, to the U.S. intermediate holding company; and

(ii) By July 1, 2017, hold its ownership interest in all U.S. subsidiaries (other than section 2(h)(2) companies and DPC branch subsidiaries) through its U.S. intermediate holding company.

(d) *Cessation of requirements*—(1) *Enhanced prudential standards applicable to the foreign banking organization.* Subject to paragraph (d)(2) of this section, a foreign banking organization will remain subject to the applicable requirements of this subpart until its reported combined U.S. assets on the FR Y–7Q are below $50 billion for each of four consecutive calendar quarters.

(2) *Intermediate holding company requirement.* A foreign banking organization will remain subject to the U.S. intermediate holding company requirement set forth in § 252.153 until the sum of the total consolidated assets of the top-tier U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company and DPC branch subsidiary) is below $50 billion for each of four consecutive calendar quarters.

§ 252.153 U.S. intermediate holding company requirement for foreign banking organizations with U.S. non-branch assets of $50 billion or more.

(a) *Requirement to form a U.S. intermediate holding company.* (1) A foreign banking organization with U.S. non-branch assets of $50 billion or more must establish a U.S. intermediate holding company, or designate an existing subsidiary that meets the requirements of paragraph (a)(2) of this section, as its U.S. intermediate holding company.

(2) The U.S. intermediate holding company must be:

(i) Organized under the laws of the United States, any one of the fifty states of the United States, or the District of Columbia; and

(ii) Be governed by a board of directors or managers that is elected or appointed by the owners and that operates in an equivalent manner, and

has equivalent rights, powers, privileges, duties, and responsibilities, to a board of directors of a company chartered as a corporation under the laws of the United States, any one of the fifty states of the United States, or the District of Columbia.

(3) *Notice.* Within 30 days of establishing or designating a U.S. intermediate holding company under this section, a foreign banking organization must provide to the Board:

(i) A description of the U.S. intermediate holding company, including its name, location, corporate form, and organizational structure;

(ii) A certification that the U.S. intermediate holding company meets the requirements of this subpart; and

(iii) Any other information that the Board determines is appropriate.

(b) *Holdings and regulation of the U.S. intermediate holding company*—(1) *General.* Subject to paragraph (c) of this section, a foreign banking organization that is required to form a U.S. intermediate holding company under paragraph (a) of this section must hold its entire ownership interest in any U.S. subsidiary (excluding each section 2(h)(2) company or DPC branch subsidiary, if any) through its U.S. intermediate holding company.

(2) *Reporting.* Each U.S. intermediate holding company shall submit information in the manner and form prescribed by the Board.

(3) *Examinations and inspections.* The Board may examine or inspect any U.S. intermediate holding company and each of its subsidiaries and prepare a report of their operations and activities.

(c) *Alternative organizational structure*—(1) *General.* Upon a written request by a foreign banking organization, the Board may permit the foreign banking organization: to establish or designate multiple U.S. intermediate holding companies; use an alternative organizational structure to hold its combined U.S. operations; or not transfer its ownership interests in certain subsidiaries to its U.S. intermediate holding company.

(2) *Factors.* In making a determination under paragraph (c)(1) of this section, the Board may consider whether applicable law would prohibit the foreign banking organization from owning or controlling one or more of its U.S. subsidiaries through a single U.S. intermediate holding company, or whether circumstances otherwise warrant an exception based on the foreign banking organization's activities, scope of operations, structure, or similar considerations.

(3) *Request.* A request under this section to establish or designate multiple U.S. intermediate holding companies must be submitted to the Board 180 days before the foreign banking organization must form a U.S. intermediate holding company. A request not to transfer any ownership interest in a subsidiary must be submitted to the Board either 180 days before the foreign banking organization acquires the ownership interest in such U.S. subsidiary, or in a shorter period of time if permitted by the Board. The request must include a description of why the request should be granted and any other information the Board may require.

(4) *Conditions.* (i) The Board may grant relief under this section upon such conditions as the Board deems appropriate, including, but not limited to, requiring the U.S. operations of the relevant foreign banking organization to comply with additional enhanced prudential standards, or requiring such foreign banking organization to enter into supervisory agreements governing such alternative organizational structure.

(ii) If the Board permits a foreign banking organization to form two or more U.S. intermediate holding companies under this section and one or more of those U.S. intermediate holding companies does not meet an asset threshold governing applicability of any section of this subpart, such U.S. intermediate holding company shall be required to comply with those subparts as though it met or exceeded the applicable thresholds.

(iii) The Board may modify the application of any section of this subpart to a foreign banking organization that is required to form a U.S. intermediate holding company or to such U.S. intermediate holding company if appropriate to accommodate the organizational structure of the foreign banking organization or characteristics specific to such foreign banking organization and such modification is appropriate and consistent with the capital structure, size, complexity, risk profile, scope of operations, or financial condition of each U.S. intermediate holding company, safety and soundness, and the financial stability mandate of section 165 of the Dodd-Frank Act.

(d) *Implementation plan*—(1) *General.* A foreign banking organization must, by January 1, 2015, submit an implementation plan to the Board, if the sum of the total consolidated assets of the U.S. subsidiaries of the foreign banking organization, in aggregate, exceed $50 billion as of June 30, 2014 (excluding any section 2(h)(2) company and DPC branch subsidiary and reduced by amounts corresponding to balances and transactions between a top-tier U.S. subsidiary and any other top-tier U.S. subsidiary (excluding any 2(h)(2) company or DPC branch subsidiary) to the extent such items are not already eliminated in consolidation). The Board may accelerate or extend the date by which the implementation plan must be filed.

(2) *Mandatory elements of implementation plan.* An implementation plan must contain:

(i) A list of all U.S. subsidiaries controlled by the foreign banking organization setting forth the ownership interest in each subsidiary and an organizational chart showing the ownership hierarchy;

(ii) For each U.S. subsidiary that is a section 2(h)(2) company or a DPC branch subsidiary, the name, asset size, and a description of why the U.S. subsidiary qualifies as a section 2(h)(2) or a DPC branch subsidiary;

(iii) For each U.S. subsidiary for which the foreign banking organization expects to request an exemption from the requirement to transfer all or a portion of its ownership interest in the subsidiary to the U.S. intermediate holding company, the name, asset size, and a description of the reasons why the foreign banking organization intends to request that the Board grant it an exemption from the U.S. intermediate holding company requirement;

(iv) A projected timeline for the transfer by the foreign banking organization of its ownership interest in U.S. subsidiaries to the U.S. intermediate holding company, and quarterly pro forma financial statements for the U.S. intermediate holding company, including pro forma regulatory capital ratios, for the period from December 31, 2015 to January 1, 2018;

(v) A projected timeline for, and description of, all planned capital actions or strategies for capital accretion that will facilitate the U.S. intermediate holding company's compliance with the risk-based and leverage capital requirements set forth in paragraph (e)(2) of this section;

(vi) A description of the risk-management practices of the combined U.S. operations of the foreign banking organization and a description of how the foreign banking organization and U.S. intermediate holding company will come into compliance with § 252.155; and

(vii) A description of the current liquidity stress testing practices of the U.S. operations of the foreign banking organization and a description of how the foreign banking organization and

U.S. intermediate holding company will come into compliance with §§ 252.156 and 252.157.

(3) If a foreign banking organization plans to reduce its U.S. non-branch assets below $50 billion for four consecutive quarters prior to July 1, 2016, the foreign banking organization may submit a plan that describes how it intends to reduce its U.S. non-branch assets below $50 billion and any other information the Board determines is appropriate, instead of the information described in paragraph (d)(2) of this section.

(4) The Board may require a foreign banking organization that meets or exceeds the threshold for application of this section after June 30, 2014 to submit an implementation plan containing the information described in paragraph (d)(2) of this section if the Board determines that an implementation plan is appropriate.

(e) *Enhanced prudential standards for U.S. intermediate holding companies*—(1) *Applicability*—(i) *Ongoing application.* Subject to the initial applicability provisions in paragraph (e)(1)(ii) of this section, a U.S. intermediate holding company must comply with the capital, risk management, and liquidity requirements set forth in paragraphs (e)(2) through (4) of this section beginning on the date it is required to be established, and must comply with the stress test requirements set forth in paragraph (e)(5) beginning with the stress test cycle the calendar year following that in which it becomes subject to regulatory capital requirements.

(ii) *Initial applicability*—(A) *General.* A U.S. intermediate holding company required to be established by July 1, 2016 must comply with the risk-based capital and capital plan requirements, risk management, and liquidity requirements set forth in paragraphs (e)(2) through (4) of this section beginning on July 1, 2016.

(B) *Transition provisions for leverage.* (*1*) A U.S. intermediate holding company required to be established by July 1, 2016 must comply with the leverage capital requirements set forth in paragraph (e)(2)(i) of this section beginning on January 1, 2018, provided that each subsidiary bank holding company and insured depository institution controlled by the foreign banking organization immediately prior to the establishment or designation of the U.S. intermediate holding company, and each bank holding company and insured depository institution acquired by the foreign banking organization after establishment of the intermediate holding company, is subject to leverage capital requirements under 12 CFR part 217 until December 31, 2017.

(*2*) The Board may accelerate the application of the leverage ratio to a U.S. intermediate holding company if it determines that the foreign banking organization has taken actions to evade the application of this subpart.

(C) *Transition provisions for stress testing.* (*1*) A U.S. intermediate holding company required to be established by July 1, 2016 must comply with the stress test requirements set forth in paragraph (e)(5) of this section beginning on October 1, 2017, provided that each subsidiary bank holding company and insured depository institution controlled by the foreign banking organization immediately prior to the establishment or designation of the U.S. intermediate holding company, and each bank holding company and insured depository institution acquired by the foreign banking organization after establishment of the intermediate holding company, must comply with the stress test requirements in subparts B, E, or F of this subpart, as applicable, until September 30, 2017.

(*2*) The Board may accelerate the application of the stress testing requirements to a U.S. intermediate holding company if it determines that the foreign banking organization has taken actions to evade the application of this subpart.

(2) *Capital requirements for a U.S. intermediate holding company*—(i) *Risk-based capital and leverage requirements.* (A) A U.S. intermediate holding company must calculate and meet all applicable capital adequacy standards set forth in 12 CFR part 217 and any successor regulation, other than subpart E of 12 CFR part 217 and any successor regulation, and comply with all restrictions associated with applicable capital buffers, in the same manner as a bank holding company.

(B) A U.S. intermediate holding company may choose to comply with subpart E of 12 CFR part 217.

(C) Notwithstanding 12 CFR 217.100(b), if a bank holding company is a subsidiary of a foreign banking organization that is subject to this section and the bank holding company is subject to subpart E of 12 CFR part 217, the bank holding company, with the Board's prior written approval, may elect not to comply with subpart E of 12 CFR 217.

(ii) *Capital planning.* A U.S. intermediate holding company must comply with section 225.8 of Regulation Y and any successor regulation in the same manner as a bank holding company.

(3) *Risk management and risk committee requirements*—(i) *General.* A U.S. intermediate holding company must establish and maintain a risk committee that approves and periodically reviews the risk management policies and oversees the risk-management framework of the U.S. intermediate holding company. The risk committee must be a committee of the board of directors of the U.S. intermediate holding company (or equivalent thereof). The risk committee may also serve as the U.S. risk committee for the combined U.S. operations required pursuant to § 252.155(a).

(ii) *Risk-management framework.* The U.S. intermediate holding company's risk-management framework must be commensurate with the structure, risk profile, complexity, activities, and size of the U.S. intermediate holding company and consistent with the risk management policies for the combined U.S. operations of the foreign banking organization. The framework must include:

(A) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for the U.S. intermediate holding company; and

(B) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(*1*) Processes and systems for identifying and reporting risks and risk-management deficiencies at the U.S. intermediate holding company, including regarding emerging risks and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies;

(*2*) Processes and systems for establishing managerial and employee responsibility for risk management of the U.S. intermediate holding company;

(*3*) Processes and systems for ensuring the independence of the risk-management function of the U.S. intermediate holding company; and

(*4*) Processes and systems to integrate risk management and associated controls with management goals and the compensation structure of the U.S. intermediate holding company.

(iii) *Corporate governance requirements.* The risk committee of the U.S. intermediate holding company must meet at least quarterly and otherwise as needed, and must fully document and maintain records of its proceedings, including risk-management decisions.

(iv) *Minimum member requirements.* The risk committee must:

(A) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(B) Have at least one member who:

(*1*) Is not an officer or employee of the foreign banking organization or its affiliates and has not been an officer or employee of the foreign banking organization or its affiliates during the previous three years; and

(*2*) Is not a member of the immediate family, as defined in section 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(3)), of a person who is, or has been within the last three years, an executive officer, as defined in section 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)) of the foreign banking organization or its affiliates.

(v) The U.S. intermediate holding company must take appropriate measures to ensure that it implements the risk management policies for the U.S. intermediate holding company and it provides sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out the responsibilities of this subpart.

(4) *Liquidity requirements.* A U.S. intermediate holding company must comply with the liquidity risk-management requirements in § 252.156 and conduct liquidity stress tests and hold a liquidity buffer pursuant to § 252.157.

(5) *Stress test requirements.* A U.S. intermediate holding company must comply with the requirements of subparts E and F of this part and any successor regulation in the same manner as a bank holding company.

§ 252.154 Risk-based and leverage capital requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.

(a) *General requirements.* (1) A foreign banking organization with combined U.S. assets of $50 billion or more must certify to the Board that it meets capital adequacy standards on a consolidated basis established by its home-country supervisor that are consistent with the regulatory capital framework published by the Basel Committee on Banking Supervision, as amended from time to time (Basel Capital Framework).

(i) For purposes of this paragraph, home-country capital adequacy standards that are consistent with the Basel Capital Framework include all minimum risk-based capital ratios, any minimum leverage ratio, and all restrictions based on any applicable capital buffers set forth in ''Basel III: A global regulatory framework for more resilient banks and banking systems'' (2010) (Basel III Accord), each as applicable and as implemented in accordance with the Basel III Accord, including any transitional provisions set forth therein.

(ii) [Reserved]

(2) In the event that a home-country supervisor has not established capital adequacy standards that are consistent with the Basel Capital Framework, the foreign banking organization must demonstrate to the satisfaction of the Board that it would meet or exceed capital adequacy standards at the consolidated level that are consistent with the Basel Capital Framework were it subject to such standards.

(b) *Reporting.* A foreign banking organization with combined U.S. assets of $50 billion or more must provide to the Board reports relating to its compliance with the capital adequacy measures described in paragraph (a) of this section concurrently with filing the FR Y–7Q.

(c) *Noncompliance with the Basel Capital Framework.* If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions relating to the activities or business operations of the U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions. If the Board determines to impose one or more requirements, conditions, or restrictions under this paragraph, the Board will notify the company before it applies any requirement, condition or restriction, and describe the basis for imposing such requirement, condition, or restriction. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement, condition, or restriction. The Board will respond in writing to the company's request for reconsideration prior to applying the requirement, condition, or restriction.

§ 252.155 Risk-management and risk-committee requirements for foreign banking organizations with combined U.S. assets of $50 billion.

(a) *U.S. risk committee*—(1) *General.* Each foreign banking organization with combined U.S. assets of $50 billion or more must maintain a U.S. risk committee that approves and periodically reviews the risk management policies of the combined U.S. operations of the foreign banking organization and oversees the risk-management framework of such combined U.S. operations. The U.S. risk committee's responsibilities include the liquidity risk-management responsibilities set forth in § 252.156(a).

(2) *Risk-management framework.* The foreign banking organization's risk-management framework for its combined U.S. operations must be commensurate with the structure, risk profile, complexity, activities, and size of its combined U.S. operations and consistent with its enterprise-wide risk management policies. The framework must include:

(i) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for the combined U.S. operations of the foreign banking organization; and

(ii) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(A) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, on a combined U.S. operations basis and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies;

(B) Processes and systems for establishing managerial and employee responsibility for risk management of the combined U.S. operations;

(C) Processes and systems for ensuring the independence of the risk-management function of the combined U.S. operations; and

(D) Processes and systems to integrate risk management and associated controls with management goals and the compensation structure of the combined U.S. operations.

(3) *Placement of the U.S. risk committee.* (i) A foreign banking organization that conducts its operations in the United States solely through a U.S. intermediate holding company must maintain its U.S. risk committee as a committee of the board of directors of its U.S. intermediate holding company (or equivalent thereof).

(ii) A foreign banking organization that conducts its operations through U.S. branches or U.S. agencies (in addition to through its U.S. intermediate holding company, if any) may maintain its U.S. risk committee either:

(A) As a committee of the global board of directors (or equivalent thereof), on a standalone basis or as a joint committee with its enterprise-wide risk committee (or equivalent thereof); or

(B) As a committee of the board of directors of its U.S. intermediate holding company (or equivalent thereof), on a standalone basis or as a joint committee with the risk committee of its U.S. intermediate holding company required pursuant to § 252.153(e)(3).

(4) *Corporate governance requirements.* The U.S. risk committee must meet at least quarterly and otherwise as needed, and must fully document and maintain records of its proceedings, including risk-management decisions.

(5) *Minimum member requirements.* The U.S. risk committee must:

(i) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(ii) Have at least one member who:

(A) Is not an officer or employee of the foreign banking organization or its affiliates and has not been an officer or employee of the foreign banking organization or its affiliates during the previous three years; and

(B) Is not a member of the immediate family, as defined in § 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(3)), of a person who is, or has been within the last three years, an executive officer, as defined in § 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)) of the foreign banking organization or its affiliates.

(b) *U.S. chief risk officer*—(1) *General.* A foreign banking organization with combined U.S. assets of $50 billion or more or its U.S. intermediate holding company, if any, must appoint a U.S. chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) *Responsibilities.* (i) The U.S. chief risk officer is responsible for overseeing:

(A) The measurement, aggregation, and monitoring of risks undertaken by the combined U.S. operations;

(B) The implementation of and ongoing compliance with the policies and procedures for the foreign banking organization's combined U.S. operations set forth in paragraph (a)(2)(i) of this section and the development and implementation of processes and systems set forth in paragraph (a)(2)(ii) of this section; and

(C) The management of risks and risk controls within the parameters of the risk-control framework for the combined U.S. operations, and the monitoring and testing of such risk controls.

(ii) The U.S. chief risk officer is responsible for reporting risks and risk-management deficiencies of the combined U.S. operations, and resolving such risk-management deficiencies in a timely manner.

(3) *Corporate governance and reporting.* The U.S. chief risk officer must:

(i) Receive compensation and other incentives consistent with providing an objective assessment of the risks taken by the combined U.S. operations of the foreign banking organization;

(ii) Be employed by and located in the U.S. branch, U.S. agency, U.S. intermediate holding company, if any, or another U.S. subsidiary;

(iii) Report directly to the U.S. risk committee and the global chief risk officer or equivalent management official (or officials) of the foreign banking organization who is responsible for overseeing, on an enterprise-wide basis, the implementation of and compliance with policies and procedures relating to risk-management governance, practices, and risk controls of the foreign banking organization, unless the Board approves an alternative reporting structure based on circumstances specific to the foreign banking organization;

(iv) Regularly provide information to the U.S. risk committee, global chief risk officer, and the Board regarding the nature of and changes to material risks undertaken by the foreign banking organization's combined U.S. operations, including risk-management deficiencies and emerging risks, and how such risks relate to the global operations of the foreign banking organization; and

(v) Meet regularly and as needed with the Board to assess compliance with the requirements of this section.

(4) *Liquidity risk-management requirements.* The U.S. chief risk officer must undertake the liquidity risk-management responsibilities set forth in § 252.156(b).

(c) *Responsibilities of the foreign banking organization.* The foreign banking organization must take appropriate measures to ensure that its combined U.S. operations implement the risk management policies overseen by the U.S. risk committee described in paragraph (a) of this section, and its combined U.S. operations provide sufficient information to the U.S. risk committee to enable the U.S. risk committee to carry out the responsibilities of this subpart.

(d) *Noncompliance with this section.* If a foreign banking organization does not satisfy the requirements of this section, the Board may impose requirements, conditions, or restrictions relating to the activities or business operations of the combined U.S. operations of the foreign banking organization. The Board will coordinate with any relevant State or Federal regulator in the implementation of such requirements, conditions, or restrictions.

§ 252.156 Liquidity risk-management requirements for foreign banking organizations with combined U.S. assets of $50 billion.

(a) *Responsibilities of the U.S. risk committee.* (1) The U.S. risk committee established by a foreign banking organization pursuant to § 252.155(a) (or a designated subcommittee of such committee composed of members of the board of directors (or equivalent thereof) of the U.S. intermediate holding company or the foreign banking organization, as appropriate) must:

(i) Approve at least annually the acceptable level of liquidity risk that the foreign banking organization may assume in connection with the operating strategies for its combined U.S. operations (liquidity risk tolerance), with concurrence from the foreign banking organization's board of directors or its enterprise-wide risk committee, taking into account the capital structure, risk profile, complexity, activities, size of the foreign banking organization and its combined U.S. operations and the enterprise-wide liquidity risk tolerance of the foreign banking organization; and

(ii) Receive and review information provided by the senior management of the combined U.S. operations at least semi-annually to determine whether the combined U.S. operations are operating in accordance with the established liquidity risk tolerance and to ensure that the liquidity risk tolerance for the combined U.S. operations is consistent with the enterprise-wide liquidity risk tolerance established for the foreign banking organization.

(iii) Approve the contingency funding plan for the combined U.S. operations described in paragraph (e) of this section at least annually and whenever the foreign banking organization revises its contingency funding plan, and approve any material revisions to the contingency funding plan for the combined U.S. operations prior to the implementation of such revisions.

(b) *Responsibilities of the U.S. chief risk officer*—(1) *Liquidity risk.* The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must review the strategies and policies and procedures established by senior management of the U.S. operations for managing the risk that the financial condition or safety and soundness of the foreign banking organization's combined U.S. operations

would be adversely affected by its inability or the market's perception of its inability to meet its cash and collateral obligations (liquidity risk).

(2) *Liquidity risk tolerance.* The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must review information provided by the senior management of the U.S. operations to determine whether the combined U.S. operations are operating in accordance with the established liquidity risk tolerance. The U.S. chief risk officer must regularly, and, at least semi-annually, report to the foreign banking organization's U.S. risk committee and enterprise-wide risk committee, or the equivalent thereof (if any) (or a designated subcommittee of such committee composed of members of the relevant board of directors (or equivalent thereof)) on the liquidity risk profile of the foreign banking organization's combined U.S. operations and whether it is operating in accordance with the established liquidity risk tolerance for the U.S. operations, and must establish procedures governing the content of such reports.

(3) *Business lines or products.* (i) The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must approve new products and business lines and evaluate the liquidity costs, benefits, and risks of each new business line and each new product offered, managed or sold through the foreign banking organization's combined U.S. operations that could have a significant effect on the liquidity risk profile of the U.S. operations of the foreign banking organization. The approval is required before the foreign banking organization implements the business line or offers the product through its combined U.S. operations. In determining whether to approve the new business line or product, the U.S. chief risk officer must consider whether the liquidity risk of the new business line or product (under both current and stressed conditions) is within the foreign banking organization's established liquidity risk tolerance for its combined U.S. operations.

(ii) The U.S. risk committee must review at least annually significant business lines and products offered, managed or sold through the combined U.S. operations to determine whether each business line or product creates or has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each strategy or product is within the foreign banking organization's established liquidity risk tolerance for its combined U.S. operations.

(4) *Cash-flow projections.* The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must review the cash-flow projections produced under paragraph (d) of this section at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the foreign banking organization or the U.S. operations warrant) to ensure that the liquidity risk of the foreign banking organization's combined U.S. operations is within the established liquidity risk tolerance.

(5) *Liquidity risk limits.* The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must establish liquidity risk limits as set forth in paragraph (f) of this section and review the foreign banking organization's compliance with those limits at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the U.S. operations of the foreign banking organization warrant).

(6) *Liquidity stress testing.* The U.S. chief risk officer of a foreign banking organization with combined U.S. assets of $50 billion or more must:

(i) Approve the liquidity stress testing practices, methodologies, and assumptions required in § 252.157(a) at least quarterly, and whenever the foreign banking organization materially revises its liquidity stress testing practices, methodologies or assumptions;

(ii) Review the liquidity stress testing results produced under § 252.157(a) of this subpart at least quarterly; and

(iii) Approve the size and composition of the liquidity buffer established under § 252.157(c) of this subpart at least quarterly.

(c) *Independent review function.* (1) A foreign banking organization with combined U.S. assets of $50 billion or more must establish and maintain a review function that is independent of the management functions that execute funding for its combined U.S. operations to evaluate the liquidity risk management for its combined U.S. operations.

(2) The independent review function must:

(i) Regularly, but no less frequently than annually, review and evaluate the adequacy and effectiveness of the foreign banking organization's liquidity risk management processes within the combined U.S. operations, including its liquidity stress test processes and assumptions;

(ii) Assess whether the foreign banking organization's liquidity risk management function of its combined U.S. operations complies with applicable laws, regulations, supervisory guidance, and sound business practices; and

(iii) Report material liquidity risk management issues to the U.S. risk committee and the enterprise-wide risk committee in writing for corrective action, to the extent permitted by applicable law.

(d) *Cash-flow projections.* (1) A foreign banking organization with combined U.S. assets of $50 billion or more must produce comprehensive cash-flow projections for its combined U.S. operations that project cash flows arising from assets, liabilities, and off-balance sheet exposures over, at a minimum, short- and long-term time horizons. The foreign banking organization must update short-term cash-flow projections daily and must update longer-term cash-flow projections at least monthly.

(2) The foreign banking organization must establish a methodology for making cash-flow projections for its combined U.S. operations that results in projections which:

(i) Include cash flows arising from contractual maturities, intercompany transactions, new business, funding renewals, customer options, and other potential events that may impact liquidity;

(ii) Include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures;

(iii) Identify and quantify discrete and cumulative cash-flow mismatches over these time periods; and

(iv) Include sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the foreign banking organization and its combined U.S. operations, and include analyses by business line, currency, or legal entity as appropriate.

(e) *Contingency funding plan.* (1) A foreign banking organization with combined U.S. assets of $50 billion or more must establish and maintain a contingency funding plan for its combined U.S. operations that sets out the foreign banking organization's strategies for addressing liquidity needs during liquidity stress events. The contingency funding plan must be commensurate with the capital structure, risk profile, complexity, activities, size, and the established liquidity risk tolerance for the combined U.S. operations. The foreign banking organization must update the

contingency funding plan for its combined U.S. operations at least annually, and when changes to market and idiosyncratic conditions warrant.

(2) *Components of the contingency funding plan*—(i) *Quantitative assessment.* The contingency funding plan for the combined U.S. operations must:

(A) Identify liquidity stress events that could have a significant impact on the liquidity of the foreign banking organization and its combined U.S. operations;

(B) Assess the level and nature of the impact on the liquidity of the foreign banking organization and its combined U.S. operations that may occur during identified liquidity stress events;

(C) Identify the circumstances in which the foreign banking organization would implement its action plan described in paragraph (e)(2)(ii)(A) of this section, which circumstances must include failure to meet any minimum liquidity requirement imposed by the Board on the foreign banking organization's U.S. operations;

(D) Assess available funding sources and needs during the identified liquidity stress events;

(E) Identify alternative funding sources that may be used during the identified liquidity stress events; and

(F) Incorporate information generated by the liquidity stress testing required under § 252.157(a) of this subpart.

(ii) *Liquidity event management process.* The contingency funding plan for the combined U.S. operations must include an event management process that sets out the foreign banking organization's procedures for managing liquidity during identified liquidity stress events for the combined U.S. operations. The liquidity event management process must:

(A) Include an action plan that clearly describes the strategies that the foreign banking organization will use to respond to liquidity shortfalls in its combined U.S. operations for identified liquidity stress events, including the methods that the company or the combined U.S. operations will use to access alternative funding sources;

(B) Identify a liquidity stress event management team that would execute the action plan in paragraph (e)(2)(i) of this section for the combined U.S. operations;

(C) Specify the process, responsibilities, and triggers for invoking the contingency funding plan, describe the decision-making process during the identified liquidity stress events, and describe the process for executing contingency measures identified in the action plan; and

(D) Provide a mechanism that ensures effective reporting and communication within the combined U.S. operations of the foreign banking organization and with outside parties, including the Board and other relevant supervisors, counterparties, and other stakeholders.

(iii) *Monitoring.* The contingency funding plan for the combined U.S. operations must include procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the capital structure, risk profile, complexity, activities, and size of the foreign banking organization and its combined U.S. operations.

(iv) *Testing.* A foreign banking organization must periodically test:

(A) The components of the contingency funding plan to assess the plan's reliability during liquidity stress events;

(B) The operational elements of the contingency funding plan, including operational simulations to test communications, coordination, and decision-making by relevant management; and

(C) The methods it will use to access alternative funding sources for its combined U.S. operations to determine whether these funding sources will be readily available when needed.

(f) *Liquidity risk limits*—(1) *General.* A foreign banking organization with combined U.S. assets of $50 billion or more must monitor sources of liquidity risk and establish limits on liquidity risk for the combined U.S. operations, including limits on:

(i) Concentrations in sources of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and if applicable, other forms of liquidity risk;

(ii) The amount of liabilities that mature within various time horizons; and

(iii) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.

(2) *Size of limits.* Each limit established pursuant to paragraph (f)(1) of this section must be consistent with the established liquidity risk tolerance for the combined U.S. operations and reflect the capital structure, risk profile, complexity, activities, and size of the combined U.S. operations.

(g) *Collateral, legal entity, and intraday liquidity risk monitoring.* A foreign banking organization with combined U.S. assets of $50 billion or more must establish and maintain procedures for monitoring liquidity risk as set forth in this paragraph.

(1) *Collateral.* The foreign banking organization must establish and maintain policies and procedures to monitor assets that have been or are available to be pledged as collateral in connection with transactions to which entities in its U.S. operations are counterparties. These policies and procedures must provide that the foreign banking organization:

(i) Calculates all of the collateral positions for its combined U.S. operations on a weekly basis (or more frequently, as directed by the Board), specifying the value of pledged assets relative to the amount of security required under the relevant contracts and the value of unencumbered assets available to be pledged;

(ii) Monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts in the foreign banking organization's funding patterns, including shifts between intraday, overnight, and term pledging of collateral; and

(iv) Tracks operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

(2) *Legal entities, currencies and business lines.* The foreign banking organization must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs of its combined U.S. operations, within and across significant legal entities, currencies, and business lines and taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(3) *Intraday exposure.* The foreign banking organization must establish and maintain procedures for monitoring intraday liquidity risk exposure for its combined U.S. operations. These procedures must address how the management of the combined U.S. operations will:

(i) Monitor and measure expected daily inflows and outflows;

(ii) Maintain, manage and transfer collateral to obtain intraday credit;

(iii) Identify and prioritize time-specific obligations so that the foreign banking organizations can meet these obligations as expected and settle less critical obligations as soon as possible;

(iv) Control the issuance of credit to customers where necessary; and

(v) Consider the amounts of collateral and liquidity needed to meet payment systems obligations when assessing the overall liquidity needs of the combined U.S. operations.

§ 252.157 Liquidity stress testing and buffer requirements for foreign banking organizations with combined U.S. assets of $50 billion.

(a) *Liquidity stress testing requirement*—(1) *General.* (i) A foreign banking organization with combined U.S. assets of $50 billion or more must conduct stress tests to separately assess the potential impact of liquidity stress scenarios on the cash flows, liquidity position, profitability, and solvency of:

(A) Its combined U.S. operations as a whole;

(B) Its U.S. branches and agencies on an aggregate basis; and

(C) Its U.S. intermediate holding company, if any.

(ii) Each liquidity stress test required under this paragraph (a)(1) must use the stress scenarios described in paragraph (a)(3) of this section and take into account the current liquidity condition, risks, exposures, strategies, and activities of the U.S. operations.

(iii) The liquidity stress tests required under this paragraph (a)(1) must take into consideration the balance sheet exposures, off-balance sheet exposures, size, risk profile, complexity, business lines, organizational structure and other characteristics of the foreign banking organization and its combined U.S. operations that affect the liquidity risk profile of the U.S. operations.

(iv) In conducting a liquidity stress test using the scenarios described in paragraphs (a)(3)(i) and (iii) of this section, the bank holding company must address the potential direct adverse impact of associated market disruptions on the foreign banking organization's combined U.S. operations and the related indirect effect such impact could have on the combined U.S. operations of the foreign banking organization and incorporate the potential actions of other market participants experiencing liquidity stresses under the market disruptions that would adversely affect the foreign banking organization or its combined U.S. operations.

(2) *Frequency.* The liquidity stress tests required under paragraph (a)(1) of this section must be performed at least monthly. The Board may require the foreign banking organization to perform stress testing more frequently than monthly.

(3) *Stress scenarios.* (i) Each liquidity stress test conducted under paragraph (a)(1) of this section must include, at a minimum:

(A) A scenario reflecting adverse market conditions;

(B) A scenario reflecting an idiosyncratic stress event for the U.S. branches/agencies and the U.S. intermediate holding company, if any; and

(C) a scenario reflecting combined market and idiosyncratic stresses.

(ii) The foreign banking organization must incorporate additional liquidity stress scenarios into its liquidity stress test as appropriate based on the financial condition, size, complexity, risk profile, scope of operations, or activities of the combined U.S. operations, the U.S. branches and agencies, and the U.S. intermediate holding company, as applicable. The Board may require the foreign banking organization to vary the underlying assumptions and stress scenarios.

(4) *Planning horizon.* Each stress test conducted under paragraph (a)(1) of this section must include an overnight planning horizon, a 30-day planning horizon, a 90-day planning horizon, a 1-year planning horizon, and any other planning horizons that are relevant to the liquidity risk profile of the combined U.S. operations, the U.S. branches and agencies, and the U.S. intermediate holding company, if any. For purposes of this section, a ''planning horizon'' is the period over which the relevant stressed projections extend. The foreign banking organization must use the results of the stress test over the 30-day planning horizon to calculate the size of the liquidity buffers under paragraph (c) of this section.

(5) *Requirements for assets used as cash-flow sources in a stress test.* (i) To the extent an asset is used as a cash flow source to offset projected funding needs during the planning horizon in a liquidity stress test, the fair market value of the asset must be discounted to reflect any credit risk and market volatility of the asset.

(ii) Assets used as cash-flow sources during the planning horizon must be diversified by collateral, counterparty, borrowing capacity, or other factors associated with the liquidity risk of the assets.

(iii) A line of credit does not qualify as a cash flow source for purposes of a stress test with a planning horizon of 30 days or less. A line of credit may qualify as a cash flow source for purposes of a stress test with a planning horizon that exceeds 30 days.

(6) *Tailoring.* Stress testing must be tailored to, and provide sufficient detail to reflect, the capital structure, risk profile, complexity, activities, and size of the combined U.S. operations of the foreign banking organization and, as appropriate, the foreign banking organization as a whole.

(7) *Governance*—(i) *Stress test function.* A foreign banking organization with combined U.S. assets of $50 billion or more, within its combined U.S. operations and its enterprise-wide risk management, must establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time.

(ii) *Controls and oversight.* The foreign banking organization must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this section. The controls and oversight must ensure that each liquidity stress test appropriately incorporates conservative assumptions with respect to the stress scenario in paragraph (a)(3) of this section and other elements of the stress-test process, taking into consideration the capital structure, risk profile, complexity, activities, size, and other relevant factors of the U.S. operations. These assumptions must be approved by U.S. chief risk officer and subject to independent review consistent with the standards set out in § 252.156(c).

(iii) *Management information systems.* The foreign banking organization must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to the liquidity stress testing of its combined U.S. operations.

(b) *Reporting of liquidity stress tests required by home-country regulators.* A foreign banking organization with combined U.S. assets of $50 billion or more must make available to the Board, in a timely manner, the results of any liquidity internal stress tests and establishment of liquidity buffers required by regulators in its home jurisdiction. The report required under this paragraph must include the results of its liquidity stress test and liquidity buffer, if required by the laws or regulations implemented in the home jurisdiction, or expected under supervisory guidance.

(c) *Liquidity buffer requirement*—(1) *General.* A foreign banking organization with combined U.S. assets of $50 billion or more must maintain a liquidity buffer for its U.S. intermediate holding company, if any, calculated in accordance with paragraph (c)(2) of this section, and a separate liquidity buffer for its U.S. branches and agencies, if any, calculated in accordance with paragraph (c)(3) of this section.

(2) *Calculation of U.S. intermediate holding company buffer requirement.* (i) The liquidity buffer for the U.S. intermediate holding company must be sufficient to meet the projected net stressed cash-flow need over the 30-day planning horizon of a liquidity stress test conducted in accordance with paragraph (a) of this section under each scenario set forth in paragraphs (a)(3)(i) through (iii) of this section.

(ii) *Net stressed cash-flow need.* The net stressed cash-flow need for the U.S. intermediate holding company is equal to the sum of its net external stressed cash-flow need (calculated pursuant to paragraph (c)(2)(iii) of this section) and its net internal stressed cash-flow need (calculated pursuant to paragraph (c)(2)(iv) of this section) over the 30-day planning horizon.

(iii) *Net external stressed cash-flow need calculation.* The net external stressed cash-flow need for a U.S. intermediate holding company equals the difference between:

(A) The projected amount of cash-flow needs that results from transactions between the U.S. intermediate holding company and entities that are not its affiliates; and

(B) The projected amount of cash-flow sources that results from transactions between the U.S. intermediate holding company and entities that are not its affiliates.

(iv) *Net internal stressed cash-flow need calculation*—(A) *General.* The net internal stressed cash-flow need for the U.S. intermediate holding company equals the greater of:

(*1*) The greatest daily cumulative net intragroup cash-flow need over the 30-day planning horizon as calculated under paragraph (c)(2)(iv)(B) of this section; and

(*2*) Zero.

(B) *Daily cumulative net intragroup cash-flow need calculation.* The daily cumulative net intragroup cash-flow need for the U.S. intermediate holding company for purposes of paragraph (c)(2)(iv)(A) of this section is calculated as follows:

(*1*) *Daily cumulative net intragroup cash-flow need.* For any given day in the stress-test horizon, the daily cumulative net intragroup cash-flow need is a daily cumulative net intragroup cash flow that is greater than zero.

(*2*) *Daily cumulative net intragroup cash flow.* For any given day of the planning horizon, the daily cumulative net intragroup cash flow equals the sum of the net intragroup cash flow calculated for that day and the net intragroup cash flow calculated for each previous day of the stress-test horizon, as calculated in accordance with paragraph (c)(2)(iv)(C) of this section.

(C) *Net intragroup cash flow.* For any given day of the stress-test horizon, the net intragroup cash flow equals the difference between:

(*1*) The amount of cash-flow needs resulting from transactions between the U.S. intermediate holding company and its affiliates (including any U.S. branch or U.S. agency) for that day of the planning horizon; and

(*2*) The amount of cash-flow sources resulting from transactions between the U.S. intermediate holding company and its affiliates (including any U.S. branch or U.S. agency) for that day of the planning horizon.

(D) *Amounts secured by highly liquid assets.* For the purposes of calculating net intragroup cash flow under this paragraph, the amounts of intragroup cash-flow needs and intragroup cash-flow sources that are secured by highly liquid assets (as defined in paragraph (c)(7) of this section) must be excluded from the calculation.

(3) *Calculation of U.S. branch and agency liquidity buffer requirement.* (i) The liquidity buffer for the foreign banking organization's U.S. branches and agencies must be sufficient to meet the projected net stressed cash-flow need of the U.S. branches and agencies over the first 14 days of a stress test with a 30-day planning horizon, conducted in accordance with paragraph (a) of this section under the scenarios described in paragraphs (a)(3)(i) through (iii) of this section.

(ii) *Net stressed cash-flow need.* The net stressed cash-flow need of the U.S. branches and agencies of a foreign banking organization is equal to the sum of its net external stressed cash-flow need (calculated pursuant to paragraph (c)(3)(iii) of this section) and net internal stressed cash-flow need (calculated pursuant to paragraph (c)(3)(iv) of this section) over the first 14 days of the 30-day planning horizon.

(iii) *Net external stressed cash-flow need calculation.* (A) The net external stressed cash-flow need of the U.S. branches and agencies equals the difference between:

(*1*) The projected amount of cash-flow needs that results from transactions between the U.S. branches and agencies and entities other than the foreign bank's non-U.S. offices and its U.S. and non-U.S. affiliates; and

(*2*) The projected amount of cash-flow sources that results from transactions between the U.S. branches and agencies and entities other than the foreign bank's non-U.S. offices and its U.S. and non-U.S. affiliates.

(iv) *Net internal stressed cash-flow need calculation*—(A) *General.* The net internal stressed cash-flow need of the U.S. branches and agencies of the foreign banking organization equals the greater of:

(*1*) The greatest daily cumulative net intragroup cash-flow need over the first 14 days of the 30-day planning horizon, as calculated under paragraph (c)(3)(iv)(B) of this section; and

(*2*) Zero.

(B) *Daily cumulative net intragroup cash-flow need calculation.* The daily cumulative net intragroup cash-flow need of the U.S. branches and agencies of a foreign banking organization for purposes of paragraph (c)(3)(iv) of this section is calculated as follows:

(*1*) *Daily cumulative net intragroup cash-flow need.* For any given day of the stress-test horizon, the daily cumulative net intragroup cash-flow need of the U.S. branches and agencies means a daily cumulative net intragroup cash flow that is greater than zero.

(*2*) *Daily cumulative net intragroup cash flow.* For any given day of the planning horizon, the daily cumulative net intragroup cash flow of the U.S. branches and agencies equals the sum of the net intragroup cash flow calculated for that day and the net intragroup cash flow calculated for each previous day of the planning horizon, each as calculated in accordance with this paragraph (c)(3)(iv)(C) of this section.

(C) *Net intragroup cash flow.* For any given day of the planning horizon, the net intragroup cash flow must equal the difference between:

(*1*) The amount of projected cash-flow needs resulting from transactions between a U.S. branch or U.S. agency and the foreign bank's non-U.S. offices and its affiliates; and

(*2*) The amount of projected cash-flow sources resulting from transactions between a U.S. branch or U.S. agency and the foreign bank's non-U.S. offices and its affiliates.

(D) *Amounts secured by highly liquid assets.* For the purposes of calculating net intragroup cash flow of the U.S. branches and agencies under this paragraph, the amounts of intragroup cash-flow needs and intragroup cash-flow sources that are secured by highly liquid assets (as defined in paragraph (c)(7) of this section) must be excluded from the calculation.

(4) *Location of liquidity buffer*—(i) *U.S. intermediate holding companies.* A U.S. intermediate holding company must maintain in accounts in the United States the highly liquid assets comprising the liquidity buffer required under this section. To the extent that the assets consist of cash, the cash may not

be held in an account located at a U.S. branch or U.S. agency of the affiliated foreign banking organization or other affiliate that is not controlled by the U.S. intermediate holding company.

(ii) *U.S. branches and agencies.* The U.S. branches and agencies of a foreign banking organization must maintain in accounts in the United States the highly liquid assets comprising the liquidity buffer required under this section. To the extent that the assets consist of cash, the cash may not be held in an account located at the foreign banking organization's U.S. intermediate holding company or other affiliate.

(7) *Asset requirements.* The liquidity buffer required in this section for the U.S. intermediate holding company or the U.S. branches and agencies must consist of highly liquid assets that are unencumbered, as set forth below:

(i) *Highly liquid asset.* The asset must be a highly liquid asset. For these purposes, a highly liquid asset includes:

(A) Cash;

(B) Securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise; or

(C) Any other asset that the foreign banking organization demonstrates to the satisfaction of the Board:

(*1*) Has low credit risk and low market risk;

(*2*) Is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and

(*3*) Is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

(ii) *Unencumbered.* The asset must be unencumbered. For these purposes, an asset is unencumbered if it:

(A) Is free of legal, regulatory, contractual, or other restrictions on the ability of such company promptly to liquidate, sell or transfer the asset; and

(B) Is either:

(*1*) Not pledged or used to secure or provide credit enhancement to any transaction; or

(*2*) Pledged to a central bank or a U.S. government-sponsored enterprise, to the extent potential credit secured by the asset is not currently extended by such central bank or U.S. government-sponsored enterprise or any of its consolidated subsidiaries.

(iii) *Calculating the amount of a highly liquid asset.* In calculating the amount of a highly liquid asset included in the liquidity buffer, the bank holding company must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(iv) *Diversification.* The liquidity buffer must not contain significant concentrations of highly liquid assets by issuer, business sector, region, or other factor related to the foreign banking organization's risk, except with respect to cash and securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise.

§ 252.158 Capital stress testing requirements for foreign banking organizations with combined U.S. assets of $50 billion or more.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Eligible asset* means any asset of the U.S. branch or U.S. agency held in the United States that is recorded on the general ledger of a U.S. branch or U.S. agency of the foreign banking organization (reduced by the amount of any specifically allocated reserves held in the United States and recorded on the general ledger of the U.S. branch or U.S. agency in connection with such assets), subject to the following exclusions, and, for purposes of this definition, as modified by the rules of valuation set forth in paragraph (a)(1)(ii) of this section.

(i) The following assets do not qualify as eligible assets:

(A) Equity securities;

(B) Any assets classified as loss at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff;

(C) Accrued income on assets classified loss, doubtful, substandard or value impaired, at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff;

(D) Any amounts due from the home office, other offices and affiliates, including income accrued but uncollected on such amounts;

(E) The balance from time to time of any other asset or asset category disallowed at the preceding examination or by direction of the Board for any other reason until the underlying reasons for the disallowance have been removed;

(F) Prepaid expenses and unamortized costs, furniture and fixtures and leasehold improvements; and

(G) Any other asset that the Board determines should not qualify as an eligible asset.

(ii) The following rules of valuation apply:

(A) A marketable debt security is valued at its principal amount or market value, whichever is lower;

(B) An asset classified doubtful or substandard at the preceding examination by a regulatory agency, outside accountant, or the bank's internal loan review staff, is valued at 50 percent and 80 percent, respectively;

(C) With respect to an asset classified value impaired, the amount representing the allocated transfer risk reserve that would be required for such exposure at a domestically chartered bank is valued at 0 and the residual exposure is valued at 80 percent; and

(D) Real estate located in the United States and carried on the accounting records as an asset are valued at net book value or appraised value, whichever is less.

(2) *Liabilities of all U.S. branches and agencies of a foreign banking organization* means all liabilities of all U.S. branches and agencies of the foreign banking organization, including acceptances and any other liabilities (including contingent liabilities), but excluding:

(i) Amounts due to and other liabilities to other offices, agencies, branches and affiliates of such foreign banking organization, including its head office, including unremitted profits; and

(ii) Reserves for possible loan losses and other contingencies.

(3) *Pre-provision net revenue* means revenue less expenses before adjusting for total loan loss provisions.

(4) *Stress test cycle* has the same meaning as in subpart F of this part.

(5) *Total loan loss provisions* means the amount needed to make reserves adequate to absorb estimated credit losses, based upon management's evaluation of the loans and leases that the company has the intent and ability to hold for the foreseeable future or until maturity or payoff, as determined under applicable accounting standards.

(b) *In general.* (1) A foreign banking organization with combined U.S. assets of $50 billion or more and that has a U.S. branch or U.S. agency must:

(i) Be subject on a consolidated basis to a capital stress testing regime by its home-country supervisor that meets the requirements of paragraph (b)(2) of this section;

(ii) Conduct such stress tests or be subject to a supervisory stress test and meet any minimum standards set by its home-country supervisor with respect to the stress tests; and

(iii) Provide to the Board the information required under paragraph (c) of this section.

(2) The capital stress testing regime of a foreign banking organization's home-country supervisor must include:

(i) An annual supervisory capital stress test conducted by the foreign banking organization's home-country supervisor or an annual evaluation and review by the foreign banking organization's home-country supervisor of an internal capital adequacy stress test conducted by the foreign banking organization; and

(ii) Requirements for governance and controls of stress testing practices by relevant management and the board of directors (or equivalent thereof) of the foreign banking organization;

(c) *Information requirements*—(1) *In general.* A foreign banking organization with combined U.S. assets of $50 billion or more must report to the Board by January 5 of each calendar year, unless such date is extended by the Board, summary information about its stress-testing activities and results, including the following quantitative and qualitative information:

(i) A description of the types of risks included in the stress test;

(ii) A description of the conditions or scenarios used in the stress test;

(iii) A summary description of the methodologies used in the stress test;

(iv) Estimates of:

(A) Aggregate losses;

(B) Pre-provision net revenue;

(C) Total loan loss provisions;

(D) Net income before taxes; and

(E) Pro forma regulatory capital ratios required to be computed by the home-country supervisor of the foreign banking organization and any other relevant capital ratios; and

(v) An explanation of the most significant causes for any changes in regulatory capital ratios.

(2) *Additional information required for foreign banking organizations in a net due from position.* If, on a net basis, the U.S. branches and agencies of a foreign banking organization with combined U.S. assets of $50 billion or more provide funding to the foreign banking organization's non-U.S. offices and non-U.S. affiliates, calculated as the average daily position over a stress test cycle for a given year, the foreign banking organization must report the following information to the Board by January 5 of each calendar year, unless such date is extended by the Board:

(i) A detailed description of the methodologies used in the stress test, including those employed to estimate losses, revenues, and changes in capital positions;

(ii) Estimates of realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, if applicable; and loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by material sub-portfolio; and

(iii) Any additional information that the Board requests.

(d) *Imposition of additional standards for capital stress tests.* (1) Unless the Board otherwise determines in writing, a foreign banking organization that does not meet each of the requirements in paragraph (b)(1) and (2) of this section must:

(i) Maintain eligible assets in its U.S. branches and agencies that, on a daily basis, are not less than 108 percent of the average value over each day of the previous calendar quarter of the total liabilities of all U.S. branches and agencies of the foreign banking organization; and

(ii) To the extent that a foreign banking organization has not established a U.S. intermediate holding company, conduct an annual stress test of its U.S. subsidiaries to determine whether those subsidiaries have the capital necessary to absorb losses as a result of adverse economic conditions; and report to the Board on an annual basis a summary of the results of the stress test that includes the information required under paragraph (b)(1) of this section and any other information specified by the Board.

(2) An enterprise-wide stress test that is approved by the Board may meet the stress test requirement of paragraph (d)(1)(ii) of this section.

(3) *Intragroup funding restrictions or liquidity requirements for U.S. operations.* If a foreign banking organization does not meet each of the requirements in paragraphs (b)(1) and (2) of this section, the Board may require the U.S. branches and agencies of the foreign banking organization and, if the foreign banking organization has not established a U.S. intermediate holding company, any U.S. subsidiary of the foreign banking organization, to maintain a liquidity buffer or be subject to intragroup funding restrictions.

(e) *Notice and response.* If the Board determines to impose one or more conditions under paragraph (d)(3) of this section, the Board will notify the company before it applies the condition, and describe the basis for imposing the condition. Within 14 calendar days of receipt of a notification under this paragraph, the company may request in writing that the Board reconsider the requirement. The Board will respond in writing to the company's request for reconsideration prior to applying the condition.

■ 9. Subpart U is added to read as follows:

Subpart U—Debt-to-Equity Limits for U.S. and Foreign Banking Organizations

Sec.
252.220 Debt-to-equity limits for U.S. bank holding companies.
252.221 Debt-to-equity limits for foreign banking organizations.

Subpart U—Debt-to-Equity Limits for U.S. Bank Holding Companies and Foreign Banking Organizations

§ 252.220 Debt-to-equity limits for U.S. bank holding companies.

(a) *Definitions*—(1) *Debt-to-equity ratio* means the ratio of a company's total liabilities to a company's total equity capital less goodwill.

(2) *Debt* and *equity* have the same meaning as ''total liabilities'' and ''total equity capital,'' respectively, as reported by a bank holding company on the FR Y–9C.

(b) *Notice and maximum debt-to-equity ratio requirement.* The Council, or the Board on behalf of the Council, will provide written notice to a bank holding company to the extent that the Council makes a determination, pursuant to section 165(j) of the Dodd-Frank Act, that a bank holding company poses a grave threat to the financial stability of the United States and that the imposition of a debt-to-equity requirement is necessary to mitigate such risk. Beginning no later than 180 days after receiving written notice from the Council or from the Board on behalf of the Council, the bank holding company must achieve and maintain a debt-to-equity ratio of no more than 15-to-1.

(c) *Extension.* The Board may, upon request by the bank holding company for which the Council has made a determination pursuant to section 165(j) of the Dodd-Frank Act, extend the time period for compliance established under paragraph (b) of this section for up to two additional periods of 90 days each, if the Board determines that the identified company has made good faith efforts to comply with the debt-to-equity ratio requirement and that each extension would be in the public interest. Requests for an extension must be received in writing by the Board not less than 30 days prior to the expiration of the existing time period for compliance and must provide information sufficient to demonstrate that the bank holding company has made good faith efforts to comply with the debt-to-equity ratio requirement and that each extension would be in the public interest.

(d) *Termination.* The debt-to-equity ratio requirement in paragraph (b) of this section shall cease to apply to a bank holding company as of the date it receives notice from the Council of a determination that the bank holding company no longer poses a grave threat to the financial stability of the United States and that the imposition of a debt-to-equity requirement is no longer necessary.

§ 252.221 Debt-to-equity limits for foreign banking organizations.

(a) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Debt* and *equity* have the same meaning as ''total liabilities'' and ''total equity capital,'' respectively, as reported by a U.S. intermediate holding company or U.S. subsidiary on the FR Y–9C, or other reporting form prescribed by the Board.

(2) *Debt-to-equity ratio* means the ratio of total liabilities to total equity capital less goodwill.

(3) *Eligible assets* and *liabilities of all U.S. branches and agencies of a foreign bank* have the same meaning as in § 252.158(a).

(b) *Notice and maximum debt-to-equity ratio requirement.* Beginning no later than 180 days after receiving written notice from the Council or from the Board on behalf of the Council that the Council has made a determination, pursuant to section 165(j) of the Dodd-Frank Act, that the foreign banking organization poses a grave threat to the financial stability of the United States and that the imposition of a debt-to-equity requirement is necessary to mitigate such risk:

(1) The U.S. intermediate holding company, or if the foreign banking organization has not established a U.S. intermediate holding company, and any U.S. subsidiary (excluding any section 2(h)(2) company or DPC branch subsidiary, if applicable), must achieve and maintain a debt-to-equity ratio of no more than 15-to-1; and

(2) The U.S. branches and agencies of the foreign banking organization must maintain eligible assets in its U.S. branches and agencies that, on a daily basis, are not less than 108 percent of the average value over each day of the previous calendar quarter of the total liabilities of all branches and agencies operated by the foreign banking organization in the United States.

(c) *Extension.* The Board may, upon request by a foreign banking organization for which the Council has made a determination pursuant to section 165(j) of the Dodd-Frank Act, extend the time period for compliance established under paragraph (b) of this section for up to two additional periods of 90 days each, if the Board determines that such company has made good faith efforts to comply with the debt to equity ratio requirement and that each extension would be in the public interest. Requests for an extension must be received in writing by the Board not less than 30 days prior to the expiration of the existing time period for compliance and must provide information sufficient to demonstrate that the foreign banking organization has made good faith efforts to comply with the debt-to-equity ratio requirement and that each extension would be in the public interest.

(d) *Termination.* The requirements in paragraph (b) of this section cease to apply to a foreign banking organization as of the date it receives notice from the Council of a determination that the company no longer poses a grave threat to the financial stability of the United States and that imposition of the requirements in paragraph (b) of this section are no longer necessary.

By order of the Board of Governors of the Federal Reserve System, March 11, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

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Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2011–0435; FRL–9906–34–OA]

RIN 2060–AR02

National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review conducted for nine source categories regulated under the National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production. Today's action promulgates amendments concerning the following: Residual risk reviews; technology reviews; emissions during periods of startup, shutdown and malfunction; standards for previously unregulated hazardous air pollutant emission sources; revisions to require monitoring of pressure relief devices that release to the atmosphere; and electronic reporting of performance test results. This action also lifts the stay of requirements for process contact cooling towers at existing sources in one Group IV Polymers and Resins subcategory, issued on February 23, 2001. The revisions to the final rules maintain the level of environmental protection or emissions control on sources regulated by these rules.

DATES: This final action is effective on March 27, 2014. The incorporation by reference of certain publications listed in this final rule was approved by the Director of the Federal Register as of March 27, 2014.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2011–0435. All documents in the docket are listed in the *http://www.regulations.gov index.*

Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, William Jefferson Clinton (WJC) West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about these final rule amendments, contact Mr. Nick Parsons, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards (OAQPS), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5372; fax number: (919) 541–0246; email address: *parsons.nick@epa.gov.* For specific information regarding the risk modeling methodology, contact Ms. Darcie Smith, Health and Environmental Impacts Division (C159–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2076; fax number: (919) 541–0840; email address: *smith.darcie@epa.gov.* For information about the applicability of these three NESHAP to a particular entity, contact Ms. Tavara Culpepper, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, Washington, DC 20004; telephone number: (202) 564–0902; email address: *culpepper.tavara@epa.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. Several acronyms and terms used to describe industrial processes, data inventories and risk modeling are included in this final action. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

ABS Acrylonitrile Butadiene Styrene
AWP alternative work practice
BAAQMD Bay Area Air Quality Management District
CAA Clean Air Act
CBI confidential business information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
FR Federal Register
HAP hazardous air pollutants
HI hazard index
HON National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
HQ hazard quotient
ICR Information Collection Request
LDAR leak detection and repair
MABS Methyl Methacrylate Acrylonitrile Butadiene Styrene
MACT maximum achievable control technology
MACT Code Code within the NEI used to identify processes included in a source category
MBS Methyl Methacrylate Butadiene Styrene
MIR maximum individual risk
NAICS North American Industry Classification System
NEI National Emissions Inventory
NESHAP National Emission Standards for Hazardous Air Pollutants
NRDC Natural Resources Defense Council
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OECA Office of Enforcement and Compliance Assurance
OGI optical gas imaging
OMB Office of Management and Budget
P&R IV Group IV Polymers and Resins
PAI Pesticide Active Ingredient
PCCT process contact cooling tower
PEPO Polyether Polyols
PET Poly (Ethylene Terephthalate)
ppm parts per million
PRD pressure relief device
PS Polystyrene
RFA Regulatory Flexibility Act
RTR residual risk and technology review
SAN Styrene Acrylonitrile
SOCMI Synthetic Organic Chemical Manufacturing Industry
SSM startup, shutdown and malfunction
TPA Terephthalic Acid
tpy tons per year
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
VOC volatile organic compounds

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A red-line version of the regulatory language that incorporates the final changes in this action is available in the docket for this action (EPA–HQ–OAR–2011–0435).

I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

On January 9, 2012 (77 FR 1268), the EPA proposed amendments to three national emission standards for hazardous air pollutants (NESHAP): Group IV Polymers and Resins (P&R IV); Pesticide Active Ingredient Production (PAI); and Polyether Polyols Production (PEPO). This action presents the results and final decisions based on the EPA's review of these three NESHAP. Specifically, pursuant to the Clean Air Act (CAA), the EPA has completed residual risk and technology reviews (RTRs) for nine source categories covered by three separate regulations. Significant public comments and our responses are summarized in this preamble. A summary of the public comments on the proposal not presented in the preamble, and the EPA's responses to those comments, is available in the docket for this action (EPA–HQ–OAR–2011–0435).

Section 112(d)(6) of the CAA requires the EPA to review these regulations (i.e., NESHAP) and revise them as necessary (taking into account developments in practices, processes and control technologies) no less frequently than every 8 years. Section 112(f)(2) of the CAA requires the EPA to assess the remaining risks due to emissions of hazardous air pollutants (HAP) from these source categories and determine whether the emission standards provide an ample margin of safety to protect public health within 8 years of promulgation of the original standards.

The amendments also address the following: Emissions during periods of startup, shutdown and malfunction; standards for previously unregulated HAP emission sources; revisions to require monitoring of pressure relief devices in organic HAP service that release to the atmosphere; and electronic reporting of performance test results. This action also lifts the stay of requirements for process contact cooling towers at existing sources in one P&R IV subcategory issued on February 23, 2001 (66 FR 11233).

2. Summary of Major Provisions

The EPA has determined that no rule amendments are needed for these three NEHSAP based on the RTRs under CAA sections 112(d)(6) and 112(f)(2). However, the EPA is making revisions to all three NESHAP in three areas. First, the EPA is eliminating the exemption for periods of startup, shutdown and malfunction (SSM), so that the emission standards in each rule apply at all times. Second, the EPA is requiring electronic reporting of performance test results. Finally, the EPA is requiring monitoring of pressure relief devices (PRDs) in organic HAP service that release to the atmosphere.

With regard to the NESHAP for P&R IV, the EPA is making revisions in three additional areas. First, the EPA is addressing certain emissions that were not previously regulated. Second, the EPA is providing alternative compliance demonstration methods during periods of startup and shutdown. Third, the EPA is lifting the stay of requirements for process contact cooling towers at existing sources in one P&R IV subcategory.

3. Costs and Emission Reductions

Table 1 below summarizes the costs and emission reductions for this action. See section VII of this preamble for further discussion of the costs and impacts.

TABLE 1—SUMMARY OF THE COSTS AND EMISSION REDUCTIONS FOR THE FINAL GROUP IV POLYMERS AND RESINS, PESTICIDE ACTIVE INGREDIENT PRODUCTION AND POLYETHER POLYOLS PRODUCTION NESHAP AMENDMENTS

NESHAP	Number of affected plants	Capital costs ($)	Annualized costs ($/yr)	Emission reductions (tpy)
NESHAP: Group IV Polymers and Resins	31	$3,800,000	$566,000	N/A
NESHAP for Pesticide Active Ingredient Production	18	1,500,000	222,000	N/A
NESHAP for Polyether Polyols	23	1,600,000	242,000	N/A

B. Does this action apply to me?

Regulated Entities. Table 2 lists categories and entities potentially regulated by this action. Table 2 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final action for the source categories listed. To determine whether your facility would be affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any of these NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

TABLE 2—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

	NESHAP and source category	NAICS Code [1]
Group IV Polymers and Resins	Acrylic-Butadiene-Styrene Production	325211
	Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production [2].	325211
	Methyl Methacrylate-Butadiene-Styrene Production	325211
	Nitrile Resins Production [2]	325211
	Polyethylene Terephthalate Production	325211
	Polystyrene Production	325211
	Styrene-Acrylonitrile Production	325211
Pesticide Active Ingredient Production		325199, 325320
Polyether Polyols Production		325199

[1] North American Industry Classification System.
[2] There are no longer any operating facilities in either the Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production or Nitrile Resins Production source categories, and none are anticipated to begin operation in the future. Therefore, this final rule does not address these source categories.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will be available on the Internet through the Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of this final action on the TTN's policy and guidance page for newly proposed or promulgated rules at: *http://www.epa.gov/ttn/oarpg/t3pfpr.html.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final action and key technical documents on the project Web sites: *http://www.epa.gov/ttn/atw/pr4/pr4pg.html, http://www.epa.gov/ttn/atw/polyol/polyolpg.html* and *http://www.epa.gov/ttn/atw/pest/pestpg.html.* Information on the overall RTR program is available at the following Web site: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.*

D. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by May 27, 2014. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, William Jefferson Clinton Federal Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background Information for This Final Rule

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, after the EPA has identified categories of sources emitting one or more of the HAP listed in CAA section 112(b), section 112(d) calls for us to promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these technology-based standards must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

For MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as floor requirements and may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT, we must also consider control options that are more stringent than the floor,

under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emission reductions, any non-air quality health and environmental impacts and energy requirements. In promulgating MACT standards, CAA section 112(d)(2) directs us to consider the application of measures, processes, methods, systems or techniques that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials or other modifications; enclose systems or processes to eliminate emissions; collect, capture or treat HAP when released from a process, stack, storage or fugitive emissions point; and/or are design, equipment, work practice or operational standards.

In the second stage of the regulatory process, we undertake two different analyses, as required by the CAA: Section 112(d)(6) of the CAA calls for us to review these technology-based standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years; and within 8 years after promulgation of the technology-based standards, CAA section 112(f) calls for us to evaluate the risk to public health remaining after application of the technology-based standards and to revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect. In doing so, the EPA may adopt standards equal to existing MACT standards if the EPA determines that the existing standards are sufficiently protective. *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

On January 9, 2012, the EPA published a proposed rule for the PAI, PEPO and P&R IV MACT standards that took into consideration the RTR analyses (77 FR 1268). For these MACT standards, today's action provides the EPA's final determinations pursuant to the RTR provisions of CAA section 112. In addition, we are promulgating amendments for each of these NESHAP as follows:

Group IV Polymers and Resins

- Revisions to address certain emission sources not previously regulated under the standards.
- Revisions to clarify requirements for Precompliance Reports.
- Revisions to requirements related to emissions during periods of SSM.
- Revisions to requirements related to performance test electronic reporting.
- Revisions to allow for alternative compliance determination methods during periods of startup and shutdown.
- Revisions to the requirements related to PRDs.

Pesticide Active Ingredient Production

- Revisions to the definition of ''pesticide active ingredient.''
- Revisions to clarify requirements for Precompliance Plans.
- Revisions to requirements related to emissions during periods of SSM.
- Revisions to requirements related to performance test electronic reporting.
- Clarifications to the provisions for packed-bed scrubbers.
- Revisions to the requirements related to PRDs.

Polyether Polyols Production

- Revisions to clarify requirements for Precompliance Reports.
- Revisions to requirements related to emissions during periods of SSM.
- Revisions to requirements related to performance test electronic reporting.
- Revisions to the requirements related to PRDs.

Section III of this preamble presents a summary of the final rule amendments for the P&R IV, PAI and PEPO MACT standards.

III. Summary of the Final Rule Amendments

A. What are the final rule amendments for the Group IV Polymers and Resins MACT standards?

The P&R IV MACT standards apply to major sources and regulate HAP emissions from seven thermoplastics production source categories: Acrylonitrile butadiene styrene (ABS), styrene acrylonitrile (SAN), methyl methacrylate acrylonitrile butadiene styrene (MABS), methyl methacrylate butadiene styrene resin (MBS), polystyrene (PS), poly (ethylene terephthalate) (PET) and nitrile resin.[1] Sources of HAP emissions from thermoplastics production include breathing and withdrawal losses from chemical storage tanks, venting of process vessels, leaks from piping and equipment used to transfer HAP compounds (equipment leaks) and volatilization of HAP from wastewater streams.

Only five of the seven P&R IV source categories have facility operations in the U.S.: ABS, SAN, MBS, PET and PS Production. For these five source categories, we have determined that the current MACT standards reduce risk to an acceptable level, provide an ample margin of safety to protect public health and prevent adverse environmental effects. Therefore, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[2] We have also determined that there are no viable developments in HAP emission reduction practices, processes or control technologies to apply to the emission sources in these source categories, considering the technical feasibility, estimated costs, energy implications, non-air environmental impacts and emission reductions of the options identified. Therefore, it is not necessary to revise the MACT standards pursuant to CAA section 112(d)(6).

We are establishing standards at the MACT floor level of control for previously unregulated HAP emissions from equipment leaks and process contact cooling towers (PCCT) in the PET continuous terephthalic acid (TPA) high viscosity multiple end finisher subcategory, which has one facility currently in operation. For equipment leaks, the standards being finalized are work practices that include performing a 2- to 3-hour leak check upon startup following an outage where changes have been made to the facility's esterification equipment. This leak check is conducted by introducing hot ethylene glycol vapors into the system. Any leaks identified must be repaired by tightening flange bolts before introducing new materials into the process. For PCCT, the standard being finalized is a concentration limit of ethylene glycol in the PCCT at or below 6.0 percent by weight, averaged on a daily basis over a rolling 14-day period of operating days.

We are finalizing changes to the P&R IV MACT standards to eliminate the SSM exemption. Consistent with *Sierra Club* v. *EPA,* the standards in this rule apply at all times. We have also revised Table 1 to subpart JJJ (the General Provisions applicability table) in several respects. For example, we have eliminated the incorporation of the General Provisions' requirement that the source develop an SSM plan. We have also eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA has also made

[1] There are no longer any operating facilities in either the MABS Production or Nitrile Resins Production source categories, and none are anticipated to begin operation in the future. Therefore, this final rule does not address these source categories.

[2] The U.S. Court of Appeals has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

changes to the rule to remove or modify inappropriate, unnecessary or redundant language in the absence of the SSM exemption. Additionally, we are adding provisions to provide an affirmative defense to civil penalties for violations of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

In establishing the standards in this rule, the EPA has taken into account startup and shutdown periods and is establishing alternative compliance demonstration methods for those affected sources subject to emission limits expressed as mass emissions per mass product produced for continuous process vents. The final rule amendments (40 CFR 63.1315(a)(19) and (b)(2), 40 CFR 63.1316(b)(1)(i)(A), (b)(1)(ii)(A), (b)(2)(i)(A), (b)(2)(ii)(A), and (c)(1)(i), and 40 CFR 63.1318(b)(1) and (c)) allow facilities to demonstrate compliance with the rule by either: (1) Keeping records that establish the raw material feed rate and production rate were both zero; (2) meeting the limit by dividing the emission rate during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero; or (3) keeping records that establish the operating parameters of the control device used to comply with the rule were maintained at the level established to meet the emission limit at maximum representative operating conditions. See section VI.B of this preamble for greater detail regarding the commenters' concerns regarding meeting standards for continuous process vents during startup and shutdown periods and our response to those concerns.

We have also added requirements in 40 CFR 63.1331(a)(9) to require monitoring of PRDs in organic HAP service that release to the atmosphere and clarify that pressure releases from such PRDs are prohibited. We have also added requirements in 40 CFR 63.1335(e)(6)(xiii) to require reporting of any PRD releases to the atmosphere with the next periodic report.

We are also requiring the electronic submittal of performance test data to increase the ease and efficiency of data submittal and to improve data accessibility. Specifically, owners or operators of P&R IV facilities are required to submit electronic copies of applicable reports of performance tests to the EPA's WebFIRE database through an electronic emissions test report structure called the Electronic Reporting Tool (ERT). This requirement to submit performance test data electronically to the EPA does not require any additional performance testing, and applies only to those performance tests conducted using test methods that are supported by the ERT.

We have also clarified in 40 CFR 63.1335(e)(3)(i) the requirements for Precompliance Reports where an initial Precompliance Report is needed after the compliance date for the rule.

B. What are the final rule amendments for the Pesticide Active Ingredient Production MACT standards?

The PAI manufacturing process consists of the production of active ingredients in insecticides, herbicides, fungicides and related products, which are typically then formulated with inert ingredients to create end-product pesticides for application. The PAI MACT standards apply only to the active ingredient production. Emissions occur from breathing and withdrawal losses from chemical storage tanks, venting of process vessels, leaks from piping and equipment used to transfer HAP compounds (equipment leaks), volatilization of HAP from wastewater streams, evaporation from dryers and dust from bag dumps.

For the PAI source category, we have determined that the current MACT standards reduce risk to an acceptable level, provide an ample margin of safety to protect public health and prevent adverse environmental effects. Therefore, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[3] We have also determined that there are no viable developments in HAP emission reduction practices, processes or control technologies to apply to the emission sources in this source category, considering the technical feasibility, estimated costs, energy implications, non-air environmental impacts and emission reductions of the options identified. Therefore, it is not necessary to revise the MACT standards pursuant to CAA section 112(d)(6).

We are finalizing changes to the PAI MACT standards to eliminate the SSM exemption. Consistent with *Sierra Club* v. *EPA,* the standards in this rule apply at all times. We have also revised Table 1 of subpart MMM (the General Provisions applicability table) in several respects. For example, we have eliminated the incorporation of the General Provisions' requirement that the source develop an SSM plan. We have also eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. We have determined that facilities in this source category can meet the applicable emission standards at all times, including periods of startup and shutdown, in compliance with the current MACT standards, and no additional standards are needed to address emissions during these periods. The EPA has also made changes to the rule to remove or modify inappropriate, unnecessary or redundant language in the absence of the SSM exemption. Additionally, we are adding provisions to provide an affirmative defense to civil penalties for violations of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

We have added requirements in 40 CFR 63.1363(b)(4) to require monitoring of PRDs in organic HAP service that release to the atmosphere and clarify that pressure releases from such PRDs are prohibited. We have also added requirements in 40 CFR 63.1363(h)(3)(v) to require reporting of any PRD releases to the atmosphere with the next periodic report.

We are also requiring the electronic submittal of performance test data to increase the ease and efficiency of data submittal and to improve data accessibility. Specifically, owners or operators of PAI facilities are required to submit electronic copies of applicable reports of performance tests to the EPA's WebFIRE database through an electronic emissions test report structure called the ERT. This requirement to submit performance test data electronically to the EPA does not require any additional performance testing, and applies only to those performance tests conducted using test methods that are supported by the ERT.

We have also clarified in 40 CFR 63.1368(e) that sources may submit a Precompliance Plan to request alternative compliance options after the compliance date has passed or construction or preconstruction applications have already been submitted.

In addition, we have added clarifications to the provisions for packed-bed scrubbers in 40 CFR 63.1366(b)(1)(ii). We have also revised the definition for ''pesticide active ingredient.''

C. What are the final rule amendments for the Polyether Polyols Production MACT standards?

The PEPO manufacturing process involves the reaction of ethylene oxide, propylene oxide or other cyclic ethers with compounds having one or more reactive hydrogens to form chemical products with repeating ether linkages (i.e., -R–O–R-). These polyether polyols do not have significant uses of their own but are used to make a variety of other

[3] See footnote 2.

products, such as polyurethane foams, microcellular products, surface coatings, elastomers, fibers, adhesives, sealants, surfactants, lubricants, degreasing agents, hydraulic fluids, cosmetics and pharmaceuticals. The HAP emission sources at PEPO facilities include process vents, storage vessels, equipment leaks and wastewater; and at some facilities, cooling towers or other heat exchangers.

For these PEPO facilities, we have determined that the current MACT standards reduce risk to an acceptable level, provide an ample margin of safety to protect public health and prevent adverse environmental effects. Therefore, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[4] We have also determined that there are no viable developments in HAP emission reduction practices, processes or control technologies to apply to the emission sources in this source category, considering the technical feasibility, estimated costs, energy implications, non-air environmental impacts and emission reductions of the options identified. Therefore, it is not necessary to revise the MACT standards pursuant to CAA section 112(d)(6).

We are finalizing changes to the PEPO MACT standards to eliminate the SSM exemption. Consistent with *Sierra Club* v. *EPA,* the standards in this rule apply at all times. We have also revised Table 1 of subpart PPP (the General Provisions applicability table) in several respects. For example, we have eliminated the incorporation of the General Provisions' requirement that the source develop an SSM plan. We have also eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. We have determined that facilities in this source category can meet the applicable emission standards at all times, including periods of startup and shutdown, in compliance with the current MACT standards, and no additional standards are needed to address emissions during these periods. The EPA has also made changes to the rule to remove or modify inappropriate, unnecessary or redundant language in the absence of the SSM exemption. Additionally, we are adding provisions to provide an affirmative defense to civil penalties for violations of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

We have added requirements in 40 CFR 63.1434(c) to require monitoring of PRDs in organic HAP service that release to the atmosphere, and clarify that pressure releases from such PRDs are prohibited. We have also added requirements in 40 CFR 63.1439(e)(6)(ix) for facilities to report when any PRD in organic HAP service releases to the atmosphere with the next periodic report.

We are also requiring the electronic submittal of performance test data to increase the ease and efficiency of data submittal and to improve data accessibility. Specifically, owners or operators of PEPO facilities are required to submit electronic copies of applicable reports of performance tests to the EPA's WebFIRE database through an electronic emissions test report structure called the ERT. This requirement to submit performance test data electronically to the EPA does not require any additional performance testing, and applies only to those performance tests conducted using test methods that are supported by the ERT.

We have also clarified in 40 CFR 63.1439(e)(4)(i) the requirements for Precompliance Reports where an initial Precompliance Report is needed after the compliance date for the rule.

D. What are the effective and compliance dates of the standards?

Under CAA section 112(d), for new and existing sources subject to the PAI, PEPO and P&R IV MACT standards, the compliance date for the revised SSM requirements (other than PRD monitoring for existing sources and new sources that commenced construction or reconstruction on or before January 12, 2012) and electronic reporting requirements is the effective date of the promulgated standards, March 27, 2014. We are finalizing these compliance dates because these requirements should be immediately implementable by the facilities upon the next occurrence of a malfunction or a performance test that is required to be submitted to the ERT. Available information suggests that the facilities should already be able to comply with the existing standards during periods of startup and shutdown.

Under CAA section 112(i)(3), for new sources that commenced construction or reconstruction on or before January 12, 2012, and existing sources subject to the PAI, PEPO and P&R IV MACT standards, the compliance date for PRD monitoring is 3 years from the effective date of the promulgated standards, March 27, 2017. This time is needed regardless of whether an owner or operator of a facility chooses to comply with the PRD monitoring provisions by installing PRD release indicator systems and alarms, employing parameter monitoring, or by routing releases to a control device. This time period will allow facilities to research equipment and vendors, purchase, install, test and properly operate any necessary equipment by the compliance date.

For the existing facility in the PET continuous TPA high viscosity multiple end finisher subcategory subject to the P&R IV MACT standards, the compliance date for the new MACT standards applicable to equipment leaks and PCCTs is the effective date of the promulgated standards, March 27, 2014. We are finalizing this compliance date because the existing facility in this subcategory is already complying with the promulgated standards.

IV. Compliance-Related Issues Common to the NESHAP

A. How do the rules address startup, shutdown and malfunction?

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), *cert. denied,* 130 S. Ct. 1735 (U.S. 2010), the United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1) holding that under section 302(k) of the CAA, emission standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standards apply continuously.

We have eliminated the SSM exemption in these rules. Consistent with *Sierra Club* v. *EPA,* the standards in all three NESHAP apply at all times. We have also revised the General Provisions applicability tables in all three NESHAP, as applicable, in several respects, as is explained in more detail below. For example, we have eliminated the incorporation of the General Provisions' requirement that sources develop an SSM plan. We have also eliminated and revised certain NESHAP recordkeeping and reporting that is related to the eliminated SSM exemption, as described in detail in the proposed rule and summarized again here.

In establishing the standards in these final rule amendments, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not established alternate standards for these periods for the PAI, PEPO and P&R IV MACT standards.

For the P&R IV MACT standards, we received comments from industry that

[4] See footnote 2.

opine that it may not be possible to comply with emission limits at all times in the absence of an exemption for SSM periods. Specifically, the commenters asserted that emission limits expressed as a unit of mass emitted per unit of mass of product created for process vents or destruction efficiency standards could be exceeded during times of startup and shutdown. The commenters asserted this is due to the small amount of product being produced and/or lower rate of HAP emissions and higher rate of supplemental fuel sent to control devices during startup and shutdown periods. The commenters suggested that the EPA establish alternative startup and shutdown work practice standards, where meeting operating parameters could be used to comply with the rule in lieu of the production rate and destruction efficiency standards during startup and shutdown periods. Per the commenters, these operating parameters would be representative of the required level of control at continuous steady-state conditions, or routing to a control device that has been demonstrated to meet the necessary destruction efficiency standards at maximum operating conditions.

The EPA evaluated the commenters' concerns and disagrees that separate standards to address startup and shutdown periods are warranted. We agree that demonstrating compliance with a mass of emissions per mass of product produced limit may be problematic as production approaches zero, however. Therefore, we are establishing alternative compliance demonstration methods for those affected sources subject to emission limits expressed as mass emissions per mass product produced for continuous process vents. The final rule amendments (40 CFR 63.1315(a)(19) and (b)(2), 40 CFR 63.1316(b)(1)(i)(A), (b)(1)(ii)(A), (b)(2)(i)(A), (b)(2)(ii)(A), and (c)(1)(i), and 40 CFR 63.1318(b)(1) and (c)) allow facilities to demonstrate compliance with the rule by either: (1) Keeping records that establish the raw material feed rate and production rate were both zero; (2) meeting the limit by dividing the emission rate during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero; or (3) keeping records that establish the operating parameters of the control device used to comply with the rule were maintained at the level established to meet the emission limit at maximum representative operating conditions. See section VI.B of this preamble for greater detail regarding the commenters' concerns regarding standards for continuous process vents during startup and shutdown periods and our response to those concerns.

Periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner . . .'' (40 CFR 63.2). The EPA has determined that CAA section 112 does not require that emissions occurring during periods of malfunction be factored into development of CAA section 112 standards. Under CAA section 112, emission standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and, for existing sources, generally must be no less stringent than the average emission limitation ''achieved'' by the best-performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the EPA to consider malfunctions in determining the level ''achieved'' by the best performing or best controlled sources when setting emission standards. Moreover, while the EPA accounts for variability in setting emission standards consistent with CAA section 112 case law, nothing in that case law requires the EPA to consider malfunctions as part of that analysis. CAA section 112 uses the concept of ''best controlled'' and ''best performing'' unit in defining the level of stringency that CAA section 112 performance standards must meet. Applying the concept of ''best controlled'' or ''best performing'' to a unit that is malfunctioning presents significant difficulties, as malfunctions are sudden and unexpected events.

Further, accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the source categories amended with this action, and the difficulties associated with predicting or accounting for the frequency, degree and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. *See,* e.g., *Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (D.C. Cir. 1999) (''[T]he EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.'''). *See also, Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, the goal of a best-controlled or best-performing source is to operate in such a way as to avoid malfunctions. Accounting for malfunctions could lead to standards that are significantly less stringent than levels achieved by a well-performing non-malfunctioning source. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, a result of a ''sudden, infrequent, not reasonably preventable'' event and was not instead ''caused in part by poor maintenance or careless operation.'' 40 CFR 63.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause a violation of the relevant emission standard. *See,* e.g., *State Implementation Plans: Response to Petition for Rulemaking; Findings of Excess Emissions During Periods of Startup, Shutdown, and Malfunction;* Proposed rule, 78 FR 12460 (February 22, 2013); *State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown* (September 20, 1999); *Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (February 15, 1983). The EPA is therefore adding to the final rules an affirmative defense to civil penalties for violations of emission standards that are caused by malfunctions. (See 40 CFR 63.1312,

63.1361 and 63.1423 defining ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also have added other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; a source subject to the PAI, PEPO or P&R IV MACT standards must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 63.1310(k), 63.1360(k) and 63.1420(i). (See 40 CFR 22.24). The added criteria are designed in part to ensure that the affirmative defense is available only where the event that causes a violation of the emission standard meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonably preventable and not caused by poor maintenance and/or careless operation). For example, the final rule amendments provide that, to successfully assert the proposed affirmative defense, the source must prove by a preponderance of evidence that the violation was caused by a sudden, infrequent, and unavoidable failure of air pollution control and process equipment, or a process to operate in a normal or usual manner. The added criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with 40 CFR 63.1310(j)(4), 63.1360(e)(4) and 63.1420(h)(4); and to prevent future malfunctions. For example, under the added criteria, the source must prove by a preponderance of the evidence that repairs were made as expeditiously as possible when a violation occurred and that all possible steps were taken to minimize the impact of the violation on ambient air quality, the environment and human health. In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with section 113 of the CAA (see also 40 CFR 22.27).

The EPA included in the final rule amendments for the PAI, PEPO and P&R IV source categories an affirmative defense in an attempt to balance a tension, inherent in many types of air regulations, to ensure adequate compliance, while simultaneously recognizing that, despite the most diligent of efforts, emission standards may be violated under circumstances beyond the control of the source. The EPA must establish emission standards that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' CAA section 302(k), 42 U.S.C. 7602(k) (defining ''emission limitation'' and ''emission standard''). *See generally, Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (D.C. Cir. 2008). Thus, the EPA is required to ensure that emission standards are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that, even where there is a malfunction, the emission standard is still enforceable through injunctive relief. The United States Court of Appeals for the Fifth Circuit recently upheld the EPA's view that an affirmative defense provision is consistent with section 113(e) of the CAA. *Luminant Generation Co. LLC* v. *United States EPA,* 714 F.3d 841 (5th Cir. March 25, 2013) (upholding the EPA's approval of affirmative defense provisions in a CAA State Implementation Plan). While ''continuous'' standards are required, there is also case law indicating, in many situations, it is appropriate for the EPA to account for the practical realities of technology. For example, in *Essex Chemical* v. *Ruckelshaus,* 486 F.2d 427, 433 (D.C. Cir. 1973), the DC Circuit acknowledged that, in setting standards under CAA section 111, ''variant provisions'' such as provisions allowing for upsets during startup, shutdown and equipment malfunction ''appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force.'' See, also, *Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375 (D.C. Cir. 1973). Though these earlier cases may no longer represent binding precedent in light of the CAA 1977 amendments and intervening case law such as *Sierra Club* v. *EPA,* they nevertheless support the EPA's view that a system that incorporates some level of flexibility is reasonable and appropriate. The affirmative defense simply provides for a defense to civil penalties for violations that are proven to be beyond the control of the source. Through the incorporation of an affirmative defense, the EPA has formalized its approach to malfunctions. In a Clean Water Act setting, the Ninth Circuit required this type of formalized approach when regulating ''upsets beyond the control of the permit holder.'' *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977). *See, also, Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174 (9th Cir. 2012) (rejecting industry argument that reliance on the affirmative defense was not adequate). *But see, Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal approach is adequate). The final affirmative defense provisions give the EPA the flexibility to both ensure that its emission standards are ''continuous,'' as required by CAA section 302(k), 42 U.S.C. 7602(k), and account for unplanned upsets and, thus, support the reasonableness of the standard as a whole. The EPA is promulgating the affirmative defense applicable to malfunctions under the delegation of general regulatory authority set out in section 301(a)(1) of the CAA, 42 U.S.C. 7601(a)(1), in order to balance this tension between provisions of the CAA and the practical reality, as case law recognizes, that technology sometimes fails. *See generally, Citizens to Save Spencer County* v. *U.S. Environmental Protection Agency,* 600 F.2d 844, 873 (D.C. Cir. 1979) (using section 301(a) authority to harmonize inconsistent guidelines related to the implementation of federal preconstruction review requirements).

Refer to the explanations below and sections V and VI of this preamble and the Response to Comments document, available in the docket for this action, for further discussion regarding SSM-related changes made to the PAI, PEPO and P&R IV MACT standards.

1. General Duty

For the PAI MACT standards, we are revising the General Provisions applicability table (Table 1 to Subpart MMM) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in the second column to a ''no.'' Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. Similarly, for the P&R IV and PEPO MACT standards, we are also removing this requirement at 40 CFR 63.1310(j)(4) and 40 CFR 63.1420(h)(4), respectively. For the P&R IV, PAI and PEPO MACT standards, we are instead adding general duty regulatory text at 40 CFR 63.1310(j)(4), 63.1360(e)(4) and 63.1420(h)(4), respectively, that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption,

there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore the language the EPA is promulgating does not include that language from 40 CFR 63.6(e)(1).

For the P&R IV, PAI and PEPO MACT standards, we are also revising the General Provisions applicability table (Table 1 to Subpart JJJ, Table 1 to Subpart MMM, and Table 1 to Subpart PPP, respectively) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in the second column to a ''no.'' Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.1310(j)(4), 63.1360(e)(4) and 63.1420(h)(4).

2. SSM Plan

For the P&R IV, PAI and PEPO MACT standards, we are revising the General Provisions applicability table (Table 1 to Subpart JJJ, Table 1 to Subpart MMM, and Table 1 to Subpart PPP, respectively) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in the second column to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is removing the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and thus the SSM plan requirements are no longer necessary.

3. Compliance With Standards

For the P&R IV, PAI and PEPO MACT standards, we are revising the General Provisions applicability table (Table 1 to Subpart JJJ, Table 1 to Subpart MMM, and Table 1 to Subpart PPP, respectively) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in the second column to a ''no.'' The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some section 112 standard apply continuously. Consistent with *Sierra Club,* the EPA is revising standards in this rule to apply at all times.

4. Performance Testing

For the P&R IV, PAI and PEPO MACT standards, we are revising the General Provisions applicability table (Table 1 to Subpart JJJ, Table 1 to Subpart MMM, and Table 1 to Subpart PPP, respectively) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in the second column to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead adding a performance testing requirement at 40 CFR 63.1333(a), 63.1365(b) and 63.1437(a). The performance testing requirements we are adding differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. The revised performance testing provisions do not allow performance testing during periods of startup or shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. The EPA is adding language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. 40 CFR 63.7(e) requires that the owner or operator make available to the Administrator such records ''as may be necessary to determine the condition of the performance test'' available to the Administrator upon request, but does not specifically require the information to be recorded. The regulatory text the EPA is adding to this provision builds on that requirement and makes explicit the requirement to record the information.

5. Monitoring

For the P&R IV, PAI and PEPO MACT standards, we are revising the General Provisions applicability table (Table 1 to Subpart JJJ, Table 1 to Subpart MMM, and Table 1 to Subpart PPP, respectively) entries for § 63.8(c)(1)(i) and (iii) by changing the ''yes'' in the second column to a ''no.'' The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

For the PAI MACT standards, we are revising the General Provisions applicability table (Table 1 to Subpart MMM) entry for 40 CFR 63.8(d)(3) by changing the explanation in the third column. The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement, which is no longer applicable. The EPA is adding the explanation that the program of corrective action should be included in the plan required under 40 CFR 63.8(d)(2).

6. Recordkeeping

For the PAI MACT standards, we are revising the General Provisions applicability table (Table 1 to Subpart MMM) entry for 40 CFR 63.10(c)(15) by changing the ''yes'' in the second column to a ''no.'' The EPA is promulgating that 40 CFR 63.10(c)(15) no longer apply. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the startup, shutdown, and malfunction plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is eliminating this requirement because SSM plans will no longer be required, and therefore 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

7. Reporting

For the P&R IV, PAI and PEPO MACT standards, we are revising the General Provisions applicability table (Table 1 to Subpart JJJ, Table 1 to Subpart MMM, and Table 1 to Subpart PPP, respectively) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in the second column to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is adding reporting requirements to 40 CFR 63.1335(b)(1)(ii), 63.1368(i) and 63.1439(b)(1)(ii). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are promulgating language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual periodic report already required under these rules. We are promulgating that the report must contain the number, date, time, duration and cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant

emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is promulgating this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans will no longer be required. The final amendments therefore eliminate the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We note that reporting a failure to meet an applicable standard could include malfunction events for which a source may choose to submit documentation to support an assertion of affirmative defense. If a source provides all the material required in 40 CFR 63.1310(k), 63.1360(k) or 63.1420(i) to support an affirmative defense, the source need not submit the same information two times in the same report. While assertion of an affirmative defense is not mandatory and would occur only if a source chooses to take advantage of the affirmative defense, the finalized affirmative defense also requires additional reporting that goes beyond these routine requirements related to a failure to meet an applicable standard for a reason other than a malfunction.

For the P&R IV, PAI and PEPO MACT standards, we are revising the General Provisions applicability table (Table 1 to Subpart JJJ, Table 1 to Subpart MMM, and Table 1 to Subpart PPP, respectively) entry for 40 CFR 63.10(d)(5)(ii) by changing the ''yes'' in the second column to a ''no.'' Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdown and malfunctions when a source failed to meet an applicable standard but did not follow the SSM plan. We will no longer require owners or operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans will no longer be required.

8. Pressure Relief Devices

The original MACT standards recognized pressure releases from PRDs to be the result of malfunctions. PRDs are designed to remain closed during normal operation and only release as the result of unplanned and/or unpredictable events. A release from a PRD usually occurs during an over pressurization of the system. However, emissions vented directly to the atmosphere by PRDs in organic HAP service contain HAP that are otherwise regulated under the MACT standards that apply to these source categories.

The original MACT standards for these source categories regulated PRDs through equipment leak provisions that applied only during non-release operations. In addition, the rules followed the EPA's then-practice of exempting SSM events from otherwise applicable emissions standards. Consequently, with ''pressure releases'' being defined as HAP emitting events that occur during malfunctions, the original MACT standards did not restrict pressure releases from PRDs emitted directly to the atmosphere but instead treated them the same as all malfunctions through the SSM exemption provision.

In *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court determined that the SSM exemption violated the CAA. See section IV.A of this preamble for additional discussion. To ensure these standards are consistent with that decision, the final rule revisions remove the malfunction exemptions in the prior MACT standards. In addition, in order for our treatment of malfunction-caused pressure releases directly to the atmosphere to conform with the reasoning of the Court's ruling, the final rule adds a provision stating that HAP emissions releases directly to the atmosphere from PRDs in organic HAP service are prohibited.

In the proposal, we proposed to eliminate the SSM exemption from the standards. In addition, we stated that under the proposed revised rule releases to the atmosphere from PRDs would constitute violations of the revised rule. However, although we proposed revised regulatory text to eliminate the SSM exemptions from the rules, we omitted a proposed regulatory provision that would have given effect to the proposed intended prohibition of such PRD releases. In order to give effect to the proposed prohibition, which we are finalizing in this action, we are adding express regulatory language in the final rule revisions that clarifies our intent that pressure releases from PRDs in organic HAP service to the atmosphere are prohibited. This is a necessary additional revision to give full effect to our elimination of the general exemption for malfunctions, in light of the Court's reasoning in *Sierra Club,* and is similar to revisions that we have made in other rules in which the SSM exemption has been eliminated (see, e.g., NESHAP for Polyvinyl Chloride and Copolymers Production (77 FR 22848, April 17, 2012)). As with any malfunction event under the revised rules, an owner or operator may assert an affirmative defense against civil penalties for a malfunction causing a prohibited pressure release from a PRD in organic HAP service to the atmosphere.

To address potential releases from PRDs, we are further requiring facility owners or operators subject to these three MACT standards to employ monitoring capable of: (1) Identifying the pressure release; (2) recording the time and duration of each pressure release; and (3) notifying operators immediately that a pressure release is occurring. Owners or operators are required to keep records and report any pressure release and the amount of organic HAP released to the atmosphere with the next periodic report.

Pressure release events from PRDs in organic HAP service to the atmosphere have the potential to emit large quantities of HAP. Where a release occurs, it is important to identify and mitigate it as quickly as possible. We recognize that industry has stated that they believe releases from PRDs sometimes occur in order to protect systems from failures that could endanger worker safety and the systems that the PRDs are designed to protect. We have provided a balanced approach designed to minimize emissions while recognizing that these events may be unavoidable even in a well-designed and maintained system. Therefore, we are requiring that sources monitor PRDs in organic HAP service using a device or monitoring system that is capable of identifying and recording the time and duration of each pressure release and of notifying operators that a release has occurred. For purposes of estimating the costs of this requirement, we assumed that operators would install electronic indicators on each PRD in organic HAP service that vents to the atmosphere to identify and record the time and duration of each pressure release. However, owners or operators could use a range of methods to satisfy these requirements, including the use of a parameter monitoring system that may

already have been in place (e.g., on the process and that is sufficient to notify operators immediately that a release is occurring, as well as recording the time and duration of the release).

Based on our cost assumptions that the most expensive approach will be used, the nationwide capital cost of installing these monitors is $1.5 million, $1.6 million and $3.8 million for the PAI, PEPO and P&R IV source categories, respectively. The total annualized cost of installing and operating these monitors is $222,000, $242,000 and $566,000 for the PAI, PEPO and P&R IV source categories, respectively. For a breakdown of the PAI, PEPO and P&R IV source category costs and other costing information, see the memorandum, *Revised Cost Impacts Associated with the Final Pressure Relief Device Monitoring Requirements for the Pesticide Active Ingredient Production, Polyether Polyols Production, and Group IV Polymers and Resins Source Categories,* available in the docket for this action (EPA–HQ–OAR–2011–0435).

B. What are the requirements for submission of performance test data to the EPA?

As stated in the proposal preamble (77 FR 1285, January 9, 2012), the EPA is taking a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is requiring owners or operators of PAI, PEPO and P&R IV facilities to submit electronic copies of certain required performance test reports.

As mentioned in the preamble of the proposal, data will be collected by direct computer-to-computer electronic transfer using EPA-provided software. As discussed in the proposal, the EPA-provided software is an electronic performance test report tool called the ERT. The ERT will generate an electronic report package that will be submitted to the Compliance and Emissions Data Reporting Interface (CEDRI) and then archived to the EPA's Central Data Exchange (CDX). A description and instructions for use of the ERT can be found at: *http://www.epa.gov/ttn/chief/ert/index.html* and CEDRI can be accessed through the CDX Web site: (*www.epa.gov/cdx*).

The requirement to submit performance test data electronically to the EPA does not create any additional performance testing and will apply only to those performance tests conducted using test methods that are supported by the ERT. A listing of the pollutants and test methods supported by the ERT is available at the ERT Web site. The EPA believes, through this approach, industry will save time in the performance test submittal process. Additionally, this rulemaking benefits industry by cutting back on recordkeeping costs as the performance test reports that are submitted to the EPA using CEDRI are no longer required to be kept in hard copy.

As mentioned in the proposal preamble, state, local and tribal agencies may benefit from more streamlined and accurate review of performance test data that will be available on the EPA WebFIRE database. Additionally, performance test data will become available to the public through WebFIRE. Having such data publicly available enhances transparency and accountability. For a more thorough discussion of electronic reporting of performance tests using direct computer-to-computer electronic transfer and using EPA-provided software, see the discussion in the preamble of the proposal (77 FR 1285–1286, January 9, 2012).

In summary, in addition to supporting regulation development, control strategy development and other air pollution control activities, having an electronic database populated with performance test data will save industry, state, local, tribal agencies and the EPA significant time, money and effort while improving the quality of emission inventories and air quality regulations.

V. Summary of Significant Changes Since Proposal

A. What changes did we make to the risk assessments for these source categories since proposal?

Section 112(f)(2) of the CAA requires us to determine whether certain emission standards reduce risk to an acceptable level and, once we have ensured that the risk is acceptable, whether the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. First, we determine whether there is an acceptable risk. The EPA generally presumes the risk is acceptable if the maximum individual risk (MIR) of cancer is no higher than 100-in-1 million. The EPA bases its overall judgment of acceptability on the MIR and a series of other health measures and factors. In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than MIR alone. If the risk is unacceptable, the EPA must require additional controls, without consideration of cost, to ensure an acceptable level of risk. After determining that the level of risk is acceptable, the EPA evaluates whether the standards provide an ample margin of safety to protect public health by considering costs and economic impacts of controls, technological feasibility and other relevant factors, in addition to those health measures and factors considered to determine acceptability. Considering all of these factors, the EPA ensures that the standard is set at a level that provides an ample margin of safety to protect public health, as required by CAA section 112(f).

At proposal, we conducted risk assessments that provided estimates of the MIR posed by the allowable and actual HAP emissions from each source in a category, the distribution of cancer risks within the exposed populations, cancer incidence, hazard index (HI) for chronic exposures to HAP with noncancer health effects and hazard quotient (HQ) for acute exposures to HAP with non-cancer health effects. We found that the residual risks to public health from all source categories subject to these three MACT standards were acceptable and, further, that the existing standards provided an ample margin of safety to protect public health and no adverse environmental effects were expected as a result of HAP emissions from these source categories. Thus, we proposed that no additional controls would be required to address such risks.

As a result of information received from commenters on the proposal, two additional facilities have been included in two of the P&R IV datasets. In addition, after proposal we asked several states to review the emissions data for the PAI, PEPO and P&R IV facilities in their states. This review resulted in the addition and removal of several facilities across the three MACT standards, as well as changes to numerous emission points in the dataset. More information on the changes made to the dataset as a result of this review can be found in the memorandum, *Emissions Data Used in Residual Risk Modeling: Pesticide Active Ingredient Production, Polyether Polyols Production, and Group IV Polymers and Resins,* available in the docket for the this action (EPA–HQ–OAR–2011–0435). This updated dataset was used in the revised risk assessment for these source categories. A summary of the results of the revised risk assessment is provided below.

For the ABS source category, the MIR decreased from 30- to 20-in-1 million, the annual cancer incidence increased from 0.003 to 0.009 cases per year, the maximum chronic non-cancer TOSHI value increased from 0.2 to 0.3, and the maximum off-site acute HQ value decreased from 2 to 0.9, based on the

REL value for acetaldehyde. Table 3 provides an overall summary of the revised inhalation risk assessment results for the ABS source category.

TABLE 3—ABS INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
6	20	20	95,000	0.009	0.3	0.3	HQ_{REL} = 0.9 acetaldehyde.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the ABS source category is the spleen.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value.

For the SAN source category, the MIR increased from 0.03- to 0.4-in-1 million, the annual cancer incidence increased from 0.000006 to 0.0003 cases per year, the maximum chronic non-cancer TOSHI value increased from 0.0002 to 0.003, and the maximum off-site acute HQ value increased from 0.007 to 0.05, based on the REL value for methylene chloride. Table 4 provides an overall summary of the revised inhalation risk assessment results for the SAN source category.

TABLE 4—SAN INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
3	0.4	0.4	0	0.0003	0.003	0.003	HQ_{REL} = 0.05 methylene chloride.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the SAN source category is the respiratory system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value.

For the MBS source category, the MIR increased from 0.4- to 1-in-1 million, the annual cancer incidence increased from 0.00003 to 0.00009 cases per year, the maximum chronic non-cancer TOSHI value increased from 0.007 to 0.02, and the maximum off-site acute HQ value increased from 9 to 10, based on the ERPG–1 value for ethyl acrylate. Table 5 provides an overall summary of the revised inhalation risk assessment results for the MBS source category.

TABLE 5—MBS INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
2	1	1	220	0.00009	0.02	0.02	HQ_{ERPG-1} = 10 ethyl acrylate.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the MBS source category is the reproductive system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value.

For the PS source category, the MIR decreased from 2- to 0.08-in-1 million, the annual cancer incidence decreased from 0.00003 to 0.00001 cases per year, the maximum chronic non-cancer TOSHI value increased from 0.004 to

0.006, and the maximum off-site acute HQ value stayed the same at 0.3, based on the REL value for styrene. Table 6 provides an overall summary of the revised inhalation risk assessment results for the PS source category.

TABLE 6—PS INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
10	0.08	0.08	0	0.00001	0.006	0.006	HQ_{REL} = 0.3 styrene.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the PS source category is the neurological system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value.

For the PET source category, the MIR increased from 9- to 10-in-1 million, the annual cancer incidence stayed the same at 0.002 cases per year, the maximum chronic non-cancer TOSHI value decreased from 0.5 to 0.4, and the maximum off-site acute HQ value decreased from 8 to 4, based on the REL value for acetaldehyde. Table 7 provides an overall summary of the revised inhalation risk assessment results for the PET source category.

TABLE 7—PET INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
13	10	10	2,300	0.002	0.4	0.4	HQ_{REL} = 4 acetaldehyde.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the PET source category is the respiratory system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value.

For the PAI source category, the MIR decreased from 7- to 6-in-1 million, the annual cancer incidence decreased from 0.001 to 0.0006 cases per year, the maximum chronic non-cancer TOSHI stayed the same at 0.7, and the maximum off-site acute HQ value decreased from 8, based on the REL value for ethylene glycol ethyl ether, to 1, based on the REL value for formaldehyde. Table 8 provides an overall summary of the revised inhalation risk assessment results for the PAI source category.

TABLE 8—PAI INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
18	6	7	370	0.0006	0.7	4	HQ_{REL} = 1 formaldehyde.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the PAI source category is the respiratory system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value.

For the PEPO source category, the MIR stayed the same at 30-in-1 million, the annual cancer incidence stayed the same at 0.02 cases per year, the maximum chronic non-cancer TOSHI value decreased from 0.8 to 0.7, and the maximum off-site acute HQ value decreased from 6 to 4, based on the REL value for acrolein. Table 9 provides an overall summary of the revised inhalation risk assessment results for the PEPO source category.

TABLE 9—PEPO INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [3]		Maximum off-site acute non-cancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
23	30	30	140,000	0.02	0.7	0.7	HQ_{REL} = 4 acrolein.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the PEPO source category is the respiratory system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value.

The results of the revised risk assessment did not significantly change the maximum risk levels to the most exposed individual for these source categories and did not affect our determinations regarding risk acceptability and ample margin of safety. The full results of the revised risk assessment for the source categories can be found in the risk assessment documentation available in the docket for this action (EPA–HQ–OAR–2011–0435).

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for the source categories addressed in these final rules. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health-protective. A discussion of the uncertainties in the emissions datasets, dispersion modeling, inhalation exposure estimates and dose-response relationships is provided in the preamble to the proposed rule. See 77 FR 1280–1282 (January 9, 2012).

B. What changes did we make to the affirmative defense provisions since proposal?

We proposed a 2-day notification requirement for asserting an affirmative defense in 40 CFR 63.1310(k) of subpart JJJ, 40 CFR 63.1360(k) of subpart MMM and 40 CFR 63.1420(i) of subpart PPP. Consistent with other recent actions by the EPA (e.g., NESHAP for Polyvinyl Chloride and Copolymers Production (77 FR 22848, April 17, 2012)), we have revised these sections in the final rules to allow an owner or operator of the affected source seeking to assert an affirmative defense, after experiencing an exceedance of its emission limit(s) or a violation of an emission standard during a malfunction, to submit a written report to the Administrator. The owner or operator may submit this report in the first periodic compliance report, deviation report or excess emissions report otherwise required after the initial occurrence of the violation of the relevant standard. However, if the next report is due less than 45 days after the violation, the affirmative defense report may be included in the next report after that. This change provides sources with sufficient time to demonstrate that they have met the required affirmative defense criteria. In addition, we have revised the affirmative defense provisions to clarify that these provisions are applicable where there have been ''violations of emission standards,'' rather than ''excess emissions,'' during malfunctions.

C. What changes did we make to the PRD provisions since proposal?

We have clarified in each of the three MACT standards that new affected sources that commenced construction or reconstruction on or before January 12, 2012, and existing affected sources have three years to comply with the PRD monitoring requirements. We proposed that facilities subject to these MACT standards would have to install a release indicator on each PRD in organic HAP service that releases to the atmosphere. In the final rules, we have revised this requirement so that facilities may comply with these requirements using existing parameter monitoring systems that notify operators immediately when a pressure release occurs. In the proposal, we proposed that a release to the atmosphere from a PRD was a violation of the rule. In the final rule, we have clarified that a pressure release to the atmosphere from a PRD in organic HAP service is prohibited.

D. What changes did we make to the Group IV Polymers and Resins MACT standards since proposal?

The final rule P&R IV amendments take into account startup and shutdown periods by establishing alternative compliance demonstration methods for meeting standards for continuous process vents during startup and shutdown periods.

We are also amending 40 CFR 63.14 to add the test methods incorporated by reference for the technical standards we are finalizing for the PCCT at the one Group IV Polymers and Resins facility in the PET continuous TPA high viscosity multiple end finisher subcategory.

E. What changes did we make to the Pesticide Active Ingredient Production MACT standards since proposal?

The final rule PAI amendments provide an alternative monitoring option for packed-bed scrubbers that allows the measurement of the liquid-to-gas ratio (according to 40 CFR 63.994(c)) in lieu of the scrubber liquid flow rate or pressure drop.

We are also revising the definition of ''pesticide active ingredient'' to reflect changes made to EPA Form 3540–16, subsequent to the promulgation of the MACT standards. The revised definition clarifies that PAI materials are identified by product classification codes used to represent PAIs, and are the same codes used in block 19 of the 1999 version of EPA Form 3540–16, the Pesticides Report for Pesticide-Producing Establishment.

F. What changes did we make to the Polyether Polyols Production MACT standards since proposal?

The final rule PEPO amendments have not been changed since proposal.

G. What other changes did we make since proposal?

We have revised the language of the PEPO and P&R IV MACT standards to require quarterly reporting only when there have been repeat excursions for the same equipment in consecutive semiannual reporting periods. Excursions can result from monitoring parameter levels being outside established ranges or from a lack of sufficient data to determine compliance

with the emission limits. These excursions are considered violations of the standards and must be reported in the semiannual report. While we proposed to remove the one excursion per semiannual reporting period allowance from these subparts, this would result in facilities being required to perform quarterly reporting for the affected source if any point at that affected source experienced an excursion. This would be overly burdensome for both the facility and the reviewing agency and was not the intention of the original MACT standards. To remedy this situation, we are finalizing the removal of the one-excursion-per-semiannual-reporting-period allowance, but revising the reporting requirements to require quarterly reporting only when there have been repeat excursions for the same equipment in consecutive semiannual reporting periods. This will ensure enhanced reporting is carried out only for equipment with potential compliance issues.

For each NESHAP, we have also clarified the requirements for Precompliance Reports/Plans where an initial Precompliance Report/Plan is needed after the compliance date for the rule. Since a Precompliance Report/Plan is only required where certain compliance options are chosen or alternative compliance options are being requested, not all existing sources would have submitted a Precompliance Report/Plan prior to the compliance date and not all new sources would have submitted one with the application for construction or reconstruction. The revisions added today clarify that sources may submit a Precompliance Report/Plan to request alternative compliance options after the compliance date has passed or construction or preconstruction applications have already been submitted.

In addition, we have also made several technical corrections for each NESHAP. These amendments are being finalized to correct inaccuracies and oversights that were previously promulgated.

VI. Significant Public Comments and Rationale for Changes to the Proposed Rule

We received written comments from 21 commenters during the comment period and three comment letters after the close of the comment period. The following is a summary of the significant comments received and our responses to these comments. The complete list of comments received and our responses to those comments can be found in the Response to Comments document available in the docket for this action (EPA–HQ–OAR–2011–0435).

For the purposes of this document, the text within the comment summaries was provided by the commenter(s) and represents their opinion(s), regardless of whether the summary specifically indicates that the statement is from a commenter(s) (e.g., ''The commenter states'' or ''The commenters assert''). The comment summaries do not represent the EPA's opinion unless our response to a comment expressly agrees with all of the comment or the relevant portion of that comment.

A. Pressure Relief Device Monitoring Requirements

Comment: Several commenters stated that the EPA had not provided factual evidence or adequate justification for requiring control of emissions from PRDs. One commenter argued that the EPA provided no data to support the claim that a large number of releases occur and may emit large quantities of HAP, or to support the contention that releases are not being identified. Other commenters stated that the EPA had not conducted this portion of the rulemaking according to the procedures set out by the CAA for the establishment of MACT standards. Commenters added that they did not believe that the EPA has a legal obligation nor the discretion to promulgate the proposed PRD provisions because the PRD monitoring and reporting requirements were not derived from the technology reviews, in response to any residual risks detected, or the D.C. Circuit's invalidation of the SSM provisions in the 40 CFR Part 63 General Provisions. Some commenters opined that since the MACT standards were established without consideration of PRD emissions, it is inappropriate for the EPA to state that emissions from PRDs violate the MACT standards.

Response: Under CAA section 112(d)(2), the EPA must promulgate technology-based standards that reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts), and such standards must contain compliance assurance provisions to make sure that they are practicably enforceable. Nothing in the CAA or its legislative history suggests that the EPA is prohibited from reviewing and revising MACT standards and their compliance assurance provisions, except as part of the CAA section 112(d)(6) or CAA section 112(f) reviews or an action taken in response to a ruling by a court. The amendments being finalized for PRD releases do not impose new emission standards for which a MACT analysis is required by the CAA. Instead, they prohibit releases to the atmosphere from PRDs in organic HAP service that are no longer appropriate following the 2008 *Sierra Club* v. *EPA* ruling, and impose additional monitoring requirements to address potential releases.

As noted in a report prepared by the SCAQMD, releases from PRDs occur randomly and the emissions can only be approximated. Based on their analysis of refinery PRD reports of PRD releases from 9 facilities in their district, there were 8 PRD releases from 2003 to 2006 that were estimated to release greater than 2,000 lbs of emissions to the atmosphere, and 8 PRD releases from 2003 to 2006 that were estimated to release between 500 and 2,000 lbs of emissions to the atmosphere.[5] The SCAQMD analysis focuses on volatile organic compound (VOC) emissions (which would also include organic HAP emissions). Additionally, the Texas Commission on Environmental Quality Emission Event Reporting Database is populated with Emission Event Reports from both the refinery and chemical sectors where the reason for the report was due to a PRD release.[6] These final amendments simply prohibit PRD releases to the atmosphere and require that these devices now be monitored to indicate when these releases occur and be reported, so that HAP emissions that may potentially occur from releases can be mitigated as soon as possible. Additionally, the final rule requirement to report PRD releases ensures that these releases will be reported nationally and not just in some states.

An agency generally remains free to revise previously promulgated rules to correct newly identified problems, even in the absence of a remand from a Court. *United Gas Improvement Co.* v. *Callery Props., Inc.,* 382 U.S. 223, 229 (1966). In light of, and consistent with, the 2008 *Sierra Club* v. *EPA* ruling, the EPA is eliminating the SSM exemption in the PAI, PEPO and P&R IV MACT standards and requiring that the standards in these rules apply at all times, including during periods of SSM. In addition, in order for our treatment of malfunction-caused pressure releases to the atmosphere to conform with the reasoning of the Court's ruling, the final rule adds a provision stating that HAP

[5] See ''Final Staff Report for Proposed Amended Rule 1173—Control of Volatile Organic Compound Leaks and Releases from Components at Petroleum Facilities and Chemical Plants.'' Planning, Rule Development and Area Sources, South Coast Air Quality Management District. May 15, 2007.

[6] See *http://www11.tceq.texas.gov/oce/eer/index.cfm.*

emissions releases to the atmosphere from PRDs in organic HAP service are prohibited. To prohibit these malfunction-caused releases, it is not necessary for us to set an emission standard that is based on a MACT floor or beyond-floor analysis (see section IV.A of this preamble); indeed, the EPA has consistently explained that we are not required to take malfunctions into account in setting standards or to devise standards that apply specifically to malfunction-caused emissions, such as PRD releases that cause HAP emissions *only* during malfunctions. However, based on comments received, we have modified the PRD monitoring provisions in the final rule. The final rule includes detection and pressure release management requirements that can be used by facilities to mitigate emissions during pressure release events from PRDs while allowing owners or operators greater flexibility based on their current equipment and operations. The final rule requires that sources monitor PRDs using a system that is capable of identifying and recording the time and duration of each pressure release and of immediately notifying operators that a release is occurring. As with any malfunction event, an affirmative defense against civil penalties would be available for a PRD release to the atmosphere if the facility can prove the elements of that defense.

Comment: Several commenters reported that there are other approaches for monitoring PRDs, including continuous monitoring of process parameters, noting that many companies have process control computer systems that already have alarms to notify the operator of deviations from normal operations and automatically adjust process operations to prevent upsets. One commenter suggested that pressure relief valves with an upstream rupture disc should be considered to have adequate monitoring already because there is pressure monitoring of the space between the two. The commenter also suggested that monitoring of ambient air within the vicinity of a process for leaks be considered a valid alternative, as this would provide reasonable assurance that the opening of a relief device would be noticed.

Another commenter opined that the EPA had not provided any information about the reliability or suitability of the wireless indicators on which the EPA based its PRD monitoring cost estimates. The commenter stated that the wireless indicators assumed in the cost analysis are similar to the ''Burst Alert Sensors'' used at one of the commenter's facilities. The commenter notes these devices have limited applicability, such as an 8-inch maximum pipe diameter, and −40 °F to 185 °F temperature range, and the EPA has not provided any data or information on the use or reliability of these devices in chemical plants or the more specific types of facilities in the source categories addressed by the proposed rule. The commenter noted these monitors exhibit a high false alarm rate and issues in areas where freezing occurs.

Commenters also expressed that the EPA provided no information in the proposed rule about which devices and types of data are acceptable for determining the duration of a PRD opening.

Response: Based on technological and cost concerns expressed by industry, we have reassessed the proposed requirement to prescribe the use of release indicators and alarms for each PRD. We acknowledge that there are other valid and potentially less costly approaches for monitoring PRDs and determining when a pressure release from a PRD has occurred for the PAI, PEPO and P&R IV source categories. As there are other approaches we believe to be equally effective (and potentially more reliable under certain circumstances for these source categories) as the proposed indicators and alarms, we have added flexibility in the rules. The final rules allow each PRD in organic HAP service to be equipped with a device or system that is capable of identifying and recording the time and duration of each pressure release (e.g., rupture disk indicators, magnetic sensors, motion detectors on the pressure relief valve stem, flow monitors, and pressure monitors) in lieu of prescribing that PRDs be equipped with release indicators and alarms.

Comment: Several industry commenters stated that the EPA did not consider the burden of data collection from PRD monitors, operation and maintenance costs or the costs of installing electronic indicators for every pressure relief valve. Commenters also opined that the cost estimates that the EPA used ($5,000 to $10,000) for the cost of the proposed PRD monitoring units at proposal were low and provided PRD monitoring unit cost estimates ranging from $14,000 to $30,000 per unit. One commenter stated that the costs cited by the EPA are for wireless monitors only and that there may be cases where more expensive wired connections would be necessary. One commenter opined that the EPA's estimate of $1,409 per PRD monitoring unit was lower than the SCAQMD document cited by the EPA (which includes costs ranging from $5,000 to $10,000 per PRD monitoring unit).

A few commenters asserted that the EPA underestimated the number of PRDs that would be subject to PRD monitoring requirements for some facilities and companies. One commenter estimated that one of their facilities had 122 PRDs and one company reported an estimated 300 PRDs for their 2 facilities that would be subject to the proposed MACT standards.

One commenter stated that, based on historical PRD emissions release data from 2009 to 2011 at the facilities of the commenter's company, there was one release event of 25 pounds. The commenter asserted that, considering these emissions data, their estimated cost of the proposed PRD monitoring requirements would be approximately $73,000/pound emissions released.

Response: As noted above, based on comments received at proposal we reassessed both our cost analysis and PRD monitoring requirements. The final rules have been amended to allow each PRD in organic HAP service to be equipped with a device or system that is capable of identifying and recording the time and duration of each pressure release (e.g., rupture disk indicators, magnetic sensors, motion detectors on the pressure relief valve stem, flow monitors, and pressure monitors) in lieu of prescribing that PRDs be equipped with release indicators and alarms.

Although we are adding flexibility to the monitoring options an owner or operator has for PRD releases for these source categories in the final rule amendments, we maintained, for the purposes of costing, that owners and operators would install electronic indicators on each relief device that vents to the atmosphere to identify releases when they occur. We recognize that facility operations and configurations will vary for differing facilities based on the number of PRDs in operation at a given facility and have attempted to address those variances in our revised costs.[7] This would amount to approximately $1,409 per PRD. We have revised the estimate of PRD system costs based on an estimated cost per PRD monitoring device combined with source-category specific estimates of the number of PRDs. Based on a report prepared by the SCAQMD, the total cost of a PRD monitoring device is estimated

[7] See ''Revised Cost Impacts Associated with the Final Pressure Relief Device Monitoring Requirements for the Pesticide Active Ingredient Production, Polyether Polyols Production, and Group IV Polymers and Resins Source Categories.'' Memorandum from EC/R Incorporated to Nick Parsons, U.S. Environmental Protection Agency. January 31, 2014. (Docket ID No. EPA–HQ–OAR–2011–0435.)

to be in the range of $5,000 to $10,000 (2007 dollars).[8] For our analysis, we assumed the PRD monitoring device to cost in the midpoint of the range ($7,500 [2007 dollars]), and we adjusted that cost to 2012 dollars ($8,345). Assuming a 10 year equipment life and 7% interest, the annualized PRD monitoring device cost is estimated to be approximately $1,185. At proposal, as one commenter acknowledges, we adopted an average facility cost of a PRD monitoring system, assuming 134 PRDs, to be $188,913 based on analyses performed for the proposed standards for the Polyvinyl Chloride and Copolymers source category.[9] Based on PRD data and models that we have developed for the PAI, PEPO and P&R IV source categories, most facility operations subject to these source categories are anticipated to have less than 76 PRDs. Based on this information, we have adjusted our PRD monitoring system costs to range from an estimated $69,233 to $112,180 for these source categories, and the annualized monitoring system capital cost estimates per facility range from $9,800 to $15,900 for these source categories.[10] Although our proposed and revised costs may be low for some facilities, the costs will likely be an overestimate for other facilities. Additionally, by allowing facilities the option to monitor parameters in order to detect PRD releases, we believe that our revised costs are conservative in that they reflect the upper range of our estimated PRD monitoring system costs per source category and presume that sources will choose to install electronic indicators and alarms versus complying with the rule by using parameter monitoring. However, it is highly likely that many sources will choose to install or use existing parameter monitoring systems (and not electronic indicators and alarms), and the cost of such a system would likely be less than the costs estimated for the use of electronic indicators and alarms.

Cost-effectiveness numbers are estimated to evaluate the benefit of implementing a control measure; the final PRD monitoring requirements, although likely to result in a reduction in HAP emissions from the affected facilities, are being required to ensure continuous compliance with existing emission standards. Therefore, while we consider the costs of this monitoring technology to be reasonable, a cost-effectiveness analysis that would be appropriate for a new emission standard imposing new control requirements to reduce HAP emissions by an estimable amount was not considered for this monitoring requirement. We have prohibited releases from PRDs because we believe it is inconsistent with the *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008) ruling. We consider PRD releases to be malfunctions and acknowledge these releases do not occur frequently and in specific cases may or may not result in significant releases to the atmosphere.

B. Startup and Shutdown Periods

Comment: Two commenters requested that the EPA provide a means to demonstrate compliance during startup and shutdown periods, including the establishment of work practices for subpart JJJ. The commenters stated that while emissions during startup and shutdown may not be higher than during normal operations, it may not be possible to demonstrate compliance with the emission limits for these specific periods. The commenters argued that, for units complying with a unit of mass emitted per unit of product produced or destruction efficiency standard, demonstrating compliance is problematic as production approaches zero. One commenter suggested a long averaging time, such as 30 days, be incorporated to resolve this problem. Commenters also suggested that a work practice standard could be established for these periods to require emissions during startup and shutdown be routed to an operating control device that has been demonstrated to achieve the required destruction efficiency or that facilities be allowed to demonstrate compliance by showing that control device operating parameters are maintained at a level that has been demonstrated to meet standards during continuous steady-state conditions.

One commenter asserted that the EPA cannot speculate that facilities can meet the normal operations emissions limitation during periods of startup and shutdown and must conduct a thorough analysis of emissions from the best performing sources during startup and shutdown and base the standards on the results of that analysis.

Response: We do not agree with commenters that alternative work practice standards should be established for P&R IV continuous process vents during startup and shutdown periods. The existing rule includes flexible continuous process vent control compliance options. Current regulations allow owners or operators to comply by meeting a production based limit, reducing emissions by 98 percent in a combustion device or to a concentration of 20 parts per million by volume (ppmv) on a dry basis (whichever is less stringent); combust the emissions in a boiler or process heater with a specified design heat input capacity or by introducing emissions into the flame zone; or combust emissions in a flare meeting specification requirements. Nonetheless, alternative compliance demonstration method options for meeting production-based limits are included in the final rule to address commenters' concerns regarding meeting production-based limits as production approaches zero. The final rule allows owners or operators to demonstrate compliance with continuous process vent production-based limits during startup and shutdown periods by either: (1) Keeping records that establish the raw material feed rate and production rate were both zero; (2) meeting the limit by dividing the emission rate during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero; or (3) keeping records that establish the operating parameters of the control device used to comply with the rule were maintained at the level established to meet the emission limit at maximum representative operating conditions. We believe the addition of the alternative compliance demonstration method options for startup and shutdown periods addresses commenters' concerns while meeting the intended emission reduction requirements.

We disagree with the commenter that claimed the EPA should have performed a more thorough analysis of emissions during periods of startup and shutdown prior to proposal, as at that time we did not have information to suggest that sources could not meet the emission standards during these times. It is only as a result of commenter input that the EPA was made aware of potential issues with compliance during periods of startup and shutdown for sources subject to the P&R IV MACT standards, and, as previously stated, we have revised the final rule to account for these periods.

C. P&R IV Equipment Leak and PCCT Provisions for Previously-Unregulated Sources

Comment: One commenter argued that the EPA does not have the authority to reconsider previously-issued MACT standards. The commenter states that

[8] See footnote 5.

[9] See "Costs and Emission Reductions of the Proposed Standards for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category." Memorandum from Eastern Research Group, Inc. to Jodi Howard, U.S. Environmental Protection Agency. April 13, 2011. (Docket Item No. EPA–HQ–OAR–2002–0037–1002.)

[10] See footnote 7.

the EPA cannot reconsider aspects of previously issued MACT standards unrelated to ''development in practices, processes, and control technologies,'' under CAA section 112(d)(6). The commenter also states the EPA cannot change its mind about what standards are required to comply with CAA section 112(d)(2) and (3), nor recalculate a floor based on subsequent performance. The commenter adds that reassessing MACT standards and imposing more stringent requirements would also be inconsistent with Congress's desire for finality evident in the judicial review provisions of CAA section 307(b), which provides that challenges to MACT standards must be raised within 60 days of their promulgation, assuring that regulated entities, the EPA, and the public know what emissions limitations will apply to a source rather than having those limitations be subject to flux. The commenter states that even if the EPA had the authority to change the existing MACT standards, it could not reasonably make the revised standards effective immediately. The commenter notes that CAA section 112(i) allows for a compliance deadline of up to 3 years.

Response: In *Medical Waste Institute* v. *EPA,* 645 F. 3d 420, 425–27 (D.C. Cir. 2011), the D.C. Circuit held that the EPA may permissibly amend prior MACT determinations, including amendments to improperly promulgated floor determinations, using its authority under CAA section 129(a)(2), which is analogous to the authority in CAA section 112(d)(2) and (3). The lack of judicial invalidation on these issues is a distinction without a difference. *National Lime,* 233 F. 3d at 633–34; see also *Medical Waste Institute,* 645 F. 3d at 426 (resetting MACT floor, based on post-compliance data, permissible when originally-established floor was improperly established, and permissibility of the EPA's action does not turn on whether the prior standard was remanded or vacated). See also our response in section VI.A above. The D.C. Circuit's decision in *Portland Cement Ass'n* v. *EPA,* 665 F.3d 177, 189 (D.C. Cir. 2011) confirms the EPA is not constrained by CAA section 112(d)(6) and it may reassess its standards more often, including revising MACT floors pursuant to section 112(d)(2) and (d)(3). The commenter is thus incorrect that the EPA lacks authority to set MACT standards under 112(d)(2) and (d)(3) for PCCT and equipment leaks from the PET continuous TPA high viscosity multiple end finisher subcategory that were not controlled under the initial P&R IV MACT standards. Put another way, if the EPA did not adopt a proper MACT standard initially, it is not amending a MACT standard but adopting one for the first time. That is the case here for PCCT and equipment leaks from the PET continuous TPA high viscosity multiple end finisher subcategory that were not controlled under the initial P&R IV MACT standards. The EPA adopted no MACT standard for these emission points, an approach soundly rejected by the D.C. Circuit in *National Lime,* 233 F. 3d at 633–34. Consequently, the EPA is not barred from making MACT floor and beyond-the-floor determinations and issuing MACT standards pursuant to CAA section 112(d)(2) and (3) in this rulemaking.

The EPA is not invoking CAA section 112(d)(6) or 112(f)(2) as its authority to promulgate the MACT standards for currently uncontrolled sources. Rather, the EPA is promulgating these MACT standards for the first time pursuant to sections 112(d)(2) and (3), the provisions that directly govern the promulgation of MACT standards. Using CAA sections 112(d)(2) and (3) ensures the process and considerations are those associated with initially establishing a MACT standard. Contrary to the commenter's assertion that the EPA conducted new MACT floor analyses for standards currently in effect in setting MACT standards to address certain unregulated sources, the EPA is not establishing these MACT standards under section 112(d)(6). As explained above, the EPA is promulgating new standards, not reevaluating the original standards, under CAA sections 112(d)(2) and (3). The EPA's action to set MACT standards for PCCT and equipment leaks from the PET continuous TPA high viscosity multiple end finisher subcategory, which were not regulated in the original MACT standards, is consistent with several recent rulemakings, in which we have addressed underlying defects or made other necessary revisions or clarifications in existing NESHAP under sections 112(d)(2) and (3), the provisions that directly govern the initial promulgation of MACT standards (see National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries, October 28, 2009, 74 FR 55670; and National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry, April 21, 2011, 76 FR 22566).

The EPA proposed setting MACT standards for the first time for equipment leaks from the PET continuous TPA high viscosity multiple end finisher subcategory that were left unregulated in the original NESHAP. Establishing standards for these emission points does not involve developing a new MACT floor analysis for MACT standards currently in effect. In the original NESHAP, the EPA exempted sources producing PET using a continuous TPA high viscosity multiple end finisher process from the requirements for equipment leaks. The EPA established MACT standards for the other P&R IV source categories, but left unregulated this subcategory of PET production. Therefore, the EPA is establishing for the first time MACT standards for the PET continuous TPA high viscosity multiple end finisher subcategory. Based on available data on the PET continuous TPA high viscosity multiple end finisher subcategory, the EPA performed the MACT floor and beyond-the floor analyses to determine the MACT standards for this subcategory. In doing so, the EPA did not reanalyze the MACT floor analysis for the standards established in the original NESHAP for the other P&R IV source categories.

Regarding the proposed MACT standards under CAA section 112(d)(2) and (3) for PCCT from the PET continuous TPA high viscosity multiple end finisher subcategory, the EPA originally promulgated standards for this emission point in the original P&R IV MACT standards. However, these standards were a beyond-the-floor option and were subsequently stayed indefinitely. Based on available data on the PET continuous TPA high viscosity multiple end finisher subcategory, the EPA performed the MACT floor and beyond-the floor analyses to determine the MACT standards for this subcategory. The EPA then proposed to re-set the previously stayed MACT standard as an emission standard that reflects the MACT floor option. In doing so, the EPA did not reanalyze the MACT floor analysis for the standards established in the original NESHAP for the other P&R IV source categories.

Comment: One commenter opined that the work practice equipment leak provisions the EPA proposed for PET sources using a continuous TPA high viscosity multiple end finisher are unacceptable and that the EPA should set a no-leak standard since leak-less valves are available. The commenter asserted that the EPA has not demonstrated it is not technologically or economically practicable to measure and control fugitive emissions numerically, as required under section 112(h). The commenter stated that the EPA must at least investigate

measurement techniques, such as remote sensing, before reaching the conclusion that only work practice standards are ''feasible.'' The commenter urged the EPA to set both numerical and work practice standards for equipment leaks. The commenter also stated that under section 112(d)(2) the EPA must consider requiring facilities to enclose systems or processes to eliminate emissions and requiring capture of fugitive emissions, which it has not done. The commenter opined that the EPA must use the most up-to-date leak detection and repair (LDAR) practices used in similar industries if the EPA determines that LDAR practices are the only way to control such emissions. The commenter also says that the EPA must set an absolute limit on how much of the equipment can be allowed to leak.

Response: We disagree with the commenter that the equipment leak standard set for PET sources using a continuous TPA high viscosity multiple end finisher is inappropriate. This source of emissions was previously unregulated by the MACT standards, and we have established standards for these emissions for the first time. Following the procedures of CAA section 112(d)(2) and (3), we established the MACT floor based on the best performing facilities in the source category or subcategory. As there is only one facility in this source subcategory, the current practices at the facility represent the best performing facility in the subcategory and the MACT floor. We performed a beyond-the-floor analysis to consider other technology available, including the LDAR program required by the Hazardous Organic NESHAP (HON), which is the required level of control for other facilities subject to the P&R IV MACT standards, and found this program to not be cost effective. See the memorandum, *Re-Evaluation of Equipment Leak Emissions and Costs at PET Facilities,* available in the docket for this action (Docket Item No. EPA–HQ–OAR–2011–0435–0059). We believe the HON LDAR program represents the most feasible and cost-effective beyond-the-floor option, as anything with more stringent requirements or more expensive equipment would only further increase the costs relative to the emission reductions. This was demonstrated in our analysis of leak-less valves performed as part of the ample margin of safety analysis for the PET source category, which showed very high costs relative to emission reductions for facilities that already have the HON LDAR program in place (see the memorandum, *Impacts of Control Options to Address Residual Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* available in the docket for this action (Docket Item No. EPA–HQ–OAR–2011–0435–0006)). In addition, as explained in the preamble to the proposed rule (77 FR 1293), the established work practice standards are consistent with CAA section 112(h). Applying a measurement methodology to this class of sources is not technologically and economically feasible due to the number of openings and possible emission points, and because the fugitive emissions cannot be routed to a conveyance designed to capture such emissions. See the memorandum, *Re-Evaluation of Equipment Leak Emissions and Costs at PET Facilities,* available in the docket for this action (Docket Item No. EPA–HQ–OAR–2011–0435–0059). We also note that the EPA is not permitted to set both a numerical and work practice standard for an emission point. A work practice standard may only be established when it is not technologically and economically feasible to establish a numerical emission standard. See CAA section 112(h).

D. Technology Review

Comment: One commenter asserted the EPA did not show that it looked for improvements in any of the technologies reviewed under section 112(d)(6), and noted several such improvements. These improvements include leak-less valves, seal-less pumps, welded connections, and the use of passive optical gas imaging (OGI) devices to reduce equipment leaks. The commenter also stated that the EPA should also require lower leak definitions of 100 ppm for valves, connectors and other equipment; 500 ppm for pumps, compressors, and pressure relief valves; tighter repair timelines of minimization of leaks within 24 hours of identification and repairs within seven days; and repairs using the best available technologies for frequent or high emissions leakers, all of which are the requirements in the California Bay Area Air Quality Management District and the South Coast Air Quality Management District. For other emission sources, the commenter opined that the EPA must prohibit flaring and require complete capture through flare gas recovery systems because it is widely believed that flares do not reduce HAP emissions to the level previously understood and flares create new toxic air emissions. The commenter asserted the EPA should also require the use of remote sensing technology as a routine matter for all current sources, considering a 2009 report showing reductions from the Texas Petrochemicals Houston plant using this technology. The commenter further asserted the EPA must consider developments noted in a 2008 report by the Environmental Integrity Project and other authors for control of fugitive emissions from storage tanks and wastewater and improved monitoring and repair for tanks.[11]

Response: In our CAA section 112(d)(6) review of pre-existing standards, we consider both improvements in practices, processes or control technologies that we may have previously considered, as well as practices, processes or control technologies that are new, or were unknown to us when the original MACT standards were developed. Because incremental changes in the practices, processes or control technologies can have a significant impact on emissions, these changes are considered in our analysis of whether to revise the MACT standards under CAA section 112(d)(6). In considering both existing and new practices, processes and control technologies, we consider costs and other factors in determining whether it is ''necessary'' to revise the existing standard.

The commenter suggested we analyze ''leak-less'' technologies such as leak-less valves, seal-less pumps, and welded connections. Packing combinations for valves and gaskets for flanges that significantly reduce emissions are in place in some facilities, particularly oil refineries. Facilities and packing manufacturers have created emission testing protocols for low leak packing in order to study and test their effectiveness.[12] Costs for leak-less valves were previously estimated for the synthetic organic chemical manufacturing industry (SOCMI).[13] Using these estimates, we analyzed the costs associated with requiring leak-less valve technology for each of these

[11] See ''Houston, We Have a Problem—A Roadmap for Reducing Petrochemical Industry Toxic Emissions in the Lone Star State.'' Galveston-Houston Association for Smog Prevention, Industry Professionals for Clean Air, Environmental Defense Fund, and Environmental Integrity Project. May 2008.

[12] See ''Analysis of Emission Reduction Techniques for Equipment Leaks.'' Memorandum from C. Hancy, RTI International, to Jodi Howard, U.S. Environmental Protection Agency. December 21, 2011. (Docket Item No. EPA–HQ–OAR–2010–0869–0029).

[13] See ''National Emission Standards for Hazardous Air Pollutants for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry: Proposed Rule.'' 71 FR 34422, June 14, 2006.

source categories. Annual costs per source category ranged from $1.3 million/yr to $30.1 million/yr per facility for each of the source categories, with total capital investments ranging from $9.2 million to $220 million. Emission reductions were assumed to be 100 percent and ranged from 5.2 to 123.4 tpy of HAP per source category, resulting in a cost effectiveness of $244,000/ton HAP. We do not consider this cost effectiveness to be reasonable and, as a result, do not consider leak-less valves to be economically feasible.

The commenter suggested we evaluate seal-less pump and welded connections. However, we do not have cost information that can be used to estimate costs for these technologies and the commenter did not provide such costs.

The commenter suggested we evaluate OGI devices as an advancement in technology. We note that the General Provisions for NESHAP at 40 CFR 63.11(c) through (e) already allows the use of OGI as an alternative work practice (AWP) to the traditional LDAR monitoring program (e.g., EPA Method 21). Section 63.11(c) through (e) allows the use of OGI along with an annual EPA Method 21 survey of all of the equipment.

We conducted a technology review to assess lowering the leak definition for valves to the 100 ppm level used by Bay Area Air Quality Management District (BAAQMD).[14] We evaluated the incremental cost effectiveness between retaining the leak definition of 500 ppm (as proposed) and a leak definition of 100 ppm. According to our analysis, the incremental cost effectiveness for all three source categories ranged from $16,000/ton HAP to $18,000/ton HAP. We do not consider this to be cost effective. In our technology review, we also evaluated the BAAQMD program for tightening the repair timeline for components awaiting repair.[15] According to our analysis, the cost effectiveness for all three source categories ranged from $11,000/ton HAP to $99,000/ton HAP. We do not consider this to be cost effective. As a result, the final rule retains the leak definition for valves of 500 ppm and the current repair schedule, as proposed.

Also, as a part of our technology review, we conducted an analysis to determine the economic feasibility of lowering the leak definition for pumps to 500 ppm, as compared to the current leak definition of 2,000 ppm.[16] We evaluated the incremental cost effectiveness between retaining the leak definition of 2,000 ppm (as proposed) and a leak definition of 500 ppm. According to our analysis, the incremental cost effectiveness for all three source categories was $29,000/ton HAP. We do not consider this to be cost effective and, as a result, the final rule retains the leak definition for pumps of 2,000 ppm.

The commenter suggested that we evaluate lowering the leak definition for pressure relief devices to 500 ppm. For all three source categories, the existing requirements for pressure relief devices already specify operation with no detectable emissions, defined as an instrument reading above 500 ppm.

We are not at this point able to agree with the premise underlying the commenter's suggestions that flaring should be entirely prohibited in the subject source categories in favor of complete capture through flare gas recovery systems. As further discussed elsewhere, the EPA is currently studying the performance of flares to control HAP emissions, and we do not yet have sufficient performance data for the PAI, PEPO and P&R IV source categories. Therefore, we are not at this time prepared to finalize any changes to the currently applicable regulations pertaining to the performance of flares in the PAI, PEPO, and P&R IV source categories, including prohibiting flaring in favor of complete capture. We may explore whether to revise flare requirements in the future, if we conclude that new requirements are warranted and would be applicable to subject source categories.

In the meantime, we note that none of the EPA's MACT standards currently require the use of flare gas recovery systems, and the use of flare gas recovery systems, while prevalent in the petroleum refining source category, has not yet been demonstrated as being applicable to these or other chemical manufacturing source categories, primarily due to the variety of chemical compounds being sent to the flare (e.g., streams from multiple chemical manufacturing process units are often sent to the same flare header system). This issue would particularly need further analysis in order to consider the commenter's suggestion, and we are not at this point prepared to resolve it. The commenter provided no data regarding this issue that would have enabled us to promulgate its suggested revision. Nor did the commenter provide data to support the assertion that flaring from these source categories ''can create new toxic air emissions.'' Therefore, the EPA is not presently able to agree with the commenter's claim that the benefits of the use of flares, especially as a backup control device to reduce HAP emissions, are outweighed by secondary HAP emissions that may be caused by flaring, such that prohibiting flaring entirely is warranted at this point in the EPA's continuing analysis.

VII. Impacts of the Final Rules

A. What are the air impacts?

We are finalizing new emission standards for equipment leaks and PCCT in the PET continuous TPA high viscosity multiple end finisher subcategory regulated by the P&R IV MACT standards at the MACT floor emissions levels currently achieved by the one facility in this subcategory. As a result, no additional emission reductions from equipment leaks and PCCT in this subcategory will be realized, although increases in emissions in the future will be prevented. For the final revisions to the PAI, PEPO and P&R IV MACT standards regarding SSM and PRDs, these changes will result in fewer emissions during SSM periods and PRD releases or less frequent SSM periods or PRD releases. However, the emission reductions, while tangible, are difficult to quantify and are not included in our assessment of air quality impacts. Therefore, no quantifiable air quality impacts are expected to result from the final amendments to these three MACT standards. While we are unable to quantify these emission reductions, we expect that emissions will decrease as a result of this rulemaking.

B. What are the cost impacts?

Under the final amendments, facilities in the PAI, PEPO and P&R IV source categories are expected to incur initial capital and annual recordkeeping and reporting costs associated with the PRD monitoring requirements and other recordkeeping and reporting requirements. The capital costs for each facility were estimated based on available information on the subject source categories and data collected for other EPA projects. The total annual costs for the PAI source category are estimated to be $222,000. The total annual costs for the PEPO source category are estimated to be $242,000. For the P&R IV source categories, the total annual costs are estimated to be $566,000. The memorandum titled, *Revised Cost Impacts Associated with*

[14] See ''Supplemental Technology Review for Equipment Leaks in Group IV Polymers and Resins, Pesticide Active Ingredient Production, and Polyether Polyols Production Source Categories.'' Memorandum from EC/R Incorporated to Nick Parsons, U.S. Environmental Protection Agency. January 31, 2014. (Docket ID No. EPA–HQ–OAR–2011–0435.)

[15] See footnote 14.

[16] See footnote 14.

the Final Pressure Relief Device Monitoring Requirements for the Pesticide Active Ingredient Production, Polyether Polyols Production, and Group IV Polymers and Resins Source Categories, includes a complete description of the cost estimate methods used for this analysis and is available in the docket for this action (EPA–HQ–OAR–2011–0435).

Though the cost savings cannot be monetized, consistent with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' issued on January 18, 2011, the electronic reporting requirements being finalized in this action for performance test reports are expected to reduce the burden for the PAI, PEPO and P&R IV facilities in the future by cutting back on the recordkeeping costs and the costs that would be associated with fewer or less-substantial data collection requests (due to performance test information being readily available on the EPA's WebFIRE database). Although the use of electric reporting may reduce the recordkeeping and reporting burden for facilities in the future, facilities will still incur annualized costs, on net, due to these final amendments.

C. What are the economic impacts?

We estimate that there will be no more than a 0.01-percent price change and a similar reduction in output associated with this action. This is based on the costs of the rule and the responsiveness of producers and consumers to supply and demand elasticities for the industries affected by this action. The impacts to affected firms will be low because the annual compliance costs are small when compared to the annual revenues for the affected parent firms (much less than 1 percent for each). The impacts to affected consumers should also be small. Thus, there will not be any significant economic impacts on affected firms and their consumers as a result of this final action.

D. What are the benefits?

As explained in the air quality impacts section, we are finalizing new emission standards for equipment leaks and PCCT in the PET continuous TPA high viscosity multiple end finisher subcategory regulated by the P&R IV MACT standards at the MACT floor emissions levels currently achieved by the one facility in this subcategory. As a result, no additional emission reductions from equipment leaks and PCCT in this subcategory will be realized, although increases in emissions in the future will be prevented. For the final revisions to the PAI, PEPO and P&R IV MACT standards regarding SSM and PRDs, these changes will result in fewer emissions during SSM periods and PRD releases or less frequent SSM periods or PRD releases. However, the emission reductions, while tangible, are difficult to quantify and are not included in our assessment of health benefits. As a result, there are no quantifiable emission reductions associated with the final amendments for these three MACT standards and, therefore, there are no quantifiable health benefits to associate with reduced emissions. While we are unable to quantify these emission reductions, as a result of this rulemaking we expect reductions in the actual and potential cancer risks and non-cancer health effects due to emissions of HAP from these source categories.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable until OMB approves them. The information requirements in this rulemaking are based on the notification, recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

The OMB previously approved the information collection requirements contained in the existing regulations being amended with this final rule (i.e., 40 CFR part 63, subparts JJJ, MMM and PPP) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. Burden is defined at 5 CFR 1320.3(b).

For these final rules, the EPA is adding affirmative defense to the estimates of burden in the ICR for these rules. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, the EPA has provided administrative adjustments to this ICR to show what the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports and records for any individual incident, including the root cause analysis, totals $1,584 annually per MACT standard, and is based on the time and effort required of a source to review relevant data, interview plant employees and document the events surrounding a malfunction that has caused an exceedance of an emission limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis for this estimate, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emission standards during malfunctions. Even if the historical records were an appropriate basis for this estimate, they would still lead us to believe that the number of instances in which source operators might avail themselves of the affirmative defense will be extremely small. The records indicate that only a small number of excess emissions events reported by source operators would be expected to result from a malfunction (based on the definition above), and that only a subset of excess emissions events caused by malfunctions would result in the source choosing to assert the affirmative

defense, resulting in no more than an estimated 1 or 2 such occurrences for all sources subject to subparts JJJ, MMM and PPP over the 3-year period covered by this ICR. We expect to gather information on such events in the future and will revise this estimate as better information becomes available.

1. Group IV Polymers and Resins MACT Standards

For the Group IV Polymers and Resins MACT standards, an ICR document prepared by the EPA for the amendments to the standards has been assigned EPA ICR number 2457.02. Burden changes associated with these amendments result from new recordkeeping and reporting requirements associated with the cooling towers and equipment leak provisions for one facility, and PRD monitoring systems and affirmative defense provisions for all facilities subject to the MACT standards.

We estimate 31 regulated facilities are currently subject to 40 CFR part 63, subpart JJJ. The annual monitoring, reporting and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart JJJ is estimated to be 459 labor hours at a cost of $26,000 per year. The initial capital costs per facility (based on PRD monitoring system costs) range from $13,000 to $112,000. The annualized capital costs per facility range between $1,800 to $16,000 based on a 10-year equipment lifespan. There is no estimated change in annual burden to the federal government for these amendments.

2. Pesticide Active Ingredient Production MACT Standards

For the Pesticide Active Ingredient Production MACT standards, an ICR document prepared by the EPA for the amendments to the standards has been assigned EPA ICR number 1807.07. Burden changes associated with these amendments result from new recordkeeping and reporting requirements associated with PRD monitoring systems and affirmative defense provisions for all facilities subject to the MACT standards.

We estimate 18 regulated facilities are currently subject to 40 CFR part 63, subpart MMM. The annual monitoring, reporting and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart MMM is estimated to be 229 labor hours at a cost of $20,000 per year. The initial capital costs per facility (based on PRD monitoring system costs) range from $12,700 to $82,000. The annualized capital costs per facility range from $1,800 to $11,700 based on a 10-year equipment lifespan. There is no estimated change in annual burden to the federal government for these amendments.

3. Polyether Polyols Production MACT Standards

For the Polyether Polyols Production MACT standards, an ICR document prepared by the EPA for the amendments to the standards has been assigned EPA ICR number 1811.09. Burden changes associated with these amendments result from new recordkeeping and reporting requirements associated with PRD monitoring systems and affirmative defense provisions for all facilities subject to the MACT standards.

We estimate 23 regulated facilities are currently subject to 40 CFR part 63, subpart PPP. The annual monitoring, reporting and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart PPP is estimated to be 292 labor hours at a cost of $18,000 per year. The initial capital costs per facility (based on PRD monitoring system costs) range from $29,000 to $69,000. The annualized capital costs per facility range from $4,100 to $9,800 based on a 10-year equipment lifespan. There is no estimated change in annual burden to the federal government for these amendments.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When these ICR are approved by OMB, the agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. According to the SBA small business standards definitions, for the Group IV Polymers and Resins source categories, which have the NAICS code of 325211 (i.e., Plastics Material and Resin Manufacturing), the SBA small business size standard is 750 employees. For the PEPO source category, which has the NAICS code of 325199 (i.e., All Other Basic Organic Chemical Manufacturing), the SBA small business size standard is 1,000 employees. For the PAI source category, which has the NAICS codes of 325199 (i.e., All Other Basic Organic Chemical Manufacturing) and 325320 (i.e., Pesticide and Other Agricultural Chemical Manufacturing), the SBA small business size standards are 1,000 employees and 500 employees, respectively.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. There are no affected small businesses in any source category affected by the final rule. Virtually all of the companies affected by this rule are large integrated corporations that are not considered to be small entities per the definitions provided in this section.

Although this final rule will not have a significant economic impact on a substantial number of small entities, the EPA nonetheless has tried to reduce the impact of this rule on small entities that could potentially be impacted by this rule in the future. The final requirements for PRD monitoring have been revised to provide facilities with greater flexibility based on their current equipment and operations. In addition, the final malfunction recordkeeping requirement was designed to provide all affected facilities, including small entities, with a means of supporting an affirmative defense in the event of a violation occurring during a malfunction.

D. Unfunded Mandates Reform Act

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local

or tribal governments, in the aggregate, or the private sector in any one year. Thus, this rule is not subject to the requirements of sections 202 or 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by state governments, and the requirements discussed in today's notice will not supersede state regulations that are more stringent. The burden to the respondents and the states is approximately $977,000 for the three MACT standards addressed in this final rule. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effect on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. Although Executive Order 13175 does not apply to this action, the EPA solicited comments on this action from tribal officials, but received none.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action will not relax the control measures on existing regulated sources, and EPA's risk assessments (included in the docket for this action) demonstrate that the existing regulations are health protective.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

This action involves technical standards. The EPA has elected to use ASTM D2908–74 or 91 and ASTM D3370–76 or 95a for the PCCT at the one Group IV Polymers and Resins facility in the PET continuous TPA high viscosity multiple end finisher subcategory. No applicable VCS were identified for these methods.

Under section 63.7(f) and section 63.8(f) of Subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications or procedures in the final rule.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. To examine the potential for any environmental justice issues that might be associated with the level of the standards for each source category, we performed a comparative analysis of the demographics of the population within the vicinity of the facilities in these source categories (i.e., within a 3-mile radius) and the national average demographic distributions. Our analysis shows that most demographic categories are within 2 percentage points of national averages, except for the African American population, which exceeds the national average by 6 percentage points (18 percent versus 12 percent). The EPA has determined that the current health risks posed by emissions from these source categories are acceptable and provide an ample margin of safety to protect public health and prevent adverse environmental effects.

K. Congressional Review Act

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. The EPA will submit a report containing this final rule and other required information to the United States Senate, the United States House of Representatives and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rules will be effective on March 27, 2014.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 31, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency (EPA) is amending Title 40, chapter I, of the Code of Federal Regulations (CFR) as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—[Amended]

■ 2. Section 63.14 is amended by:

■ a. Removing paragraphs (g)(28) and (29);

■ b. Redesignating paragraphs (g)(30) through (84) as (g)(40) to (94); and

■ c. Adding new paragraphs (g)(28) through (39).

The additions read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(g) * * *

(28) ASTM D2908–74, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, Approved June 27, 1974, IBR approved for § 63.1329(c).

(29) ASTM D2908–91, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, Approved December 15, 1991, IBR approved for § 63.1329(c).

(30) ASTM D2908–91(Reapproved 2001), Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, Approved December 15, 1991, IBR approved for § 63.1329(c).

(31) ASTM D2908–91(Reapproved 2005), Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, Approved December 1, 2005, IBR approved for § 63.1329(c).

(32) ASTM D2908–91(Reapproved 2011), Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, Approved May 1, 2011, IBR approved for § 63.1329(c).

(33) ASTM D3173–03 (Reapproved 2008), Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, (Approved February 1, 2008), IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(34) ASTM D3257–93, Standard Test Methods for Aromatics in Mineral Spirits by Gas Chromatography, IBR approved for § 63.786(b).

(35) ASTM D3370–76, Standard Practices for Sampling Water, Approved August 27, 1976, IBR approved for § 63.1329(c).

(36) ASTM D3370–95a, Standard Practices for Sampling Water from Closed Conduits, Approved September 10, 1995, IBR approved for § 63.1329(c).

(37) ASTM D3370–07, Standard Practices for Sampling Water from Closed Conduits, Approved December 1, 2007, IBR approved for § 63.1329(c).

(38) ASTM D3370–08, Standard Practices for Sampling Water from Closed Conduits, Approved October 1, 2008, IBR approved for § 63.1329(c).

(39) ASTM D3370–10, Standard Practices for Sampling Water from Closed Conduits, Approved December 1, 2010, IBR approved for § 63.1329(c).

* * * * *

Subpart JJJ—[Amended]

■ 3. Section 63.1310 is amended by:

■ a. Revising paragraphs (a)(4) introductory text, (a)(4)(iv), and (a)(4)(vi);

■ b. Revising paragraph (c)(1);

■ c. Revising paragraph (d) introductory text;

■ d. Revising paragraph (j); and

■ e. Adding paragraph (k).

The revisions and additions read as follows:

§ 63.1310 Applicability and designation of affected sources.

(a) * * *

(4) *Emission points and equipment.* The affected source also includes the emission points and components specified in paragraphs (a)(4)(i) through (vi) of this section that are associated with each applicable group of one or more TPPU constituting an affected source.

* * * * *

(iv) Each process contact cooling tower used in the manufacture of poly (ethylene terephthalate) resin (PET) that is associated with a new affected source.

* * * * *

(vi) Components required by, or utilized as a method of compliance with, this subpart, which may include control devices and recovery devices.

* * * * *

(c) * * *

(1) Components and equipment that do not contain organic HAP and are located within a TPPU that is part of an affected source;

* * * * *

(d) *Processes excluded from the affected source.* The processes specified in paragraphs (d)(1) through (5) of this section are not part of the affected source and are not subject to the requirements of both this subpart and subpart A of this part:

* * * * *

(j) *Applicability of this subpart.* (1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

(2) The emission limitations set forth in subpart H of this part, as referred to in § 63.1331, shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized, resulting in cessation of the emissions to which § 63.1331 applies.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment.

(4) *General duty.* At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(k) *Affirmative defense for violation of emission standards during malfunction.* In response to an action to enforce the standards set forth in this subpart, the owner or operator may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at § 63.2. Appropriate penalties may be assessed if the owner or operator fails to meet their burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) *Assertion of affirmative defense.* To establish the affirmative defense in any action to enforce such a standard, the owner or operator must timely meet the reporting requirements in paragraph (k)(2) of this section, and must prove by a preponderance of evidence that:

(i) The violation:

(A) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when a violation occurred; and

(iii) The frequency, amount, and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(iv) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment, and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the violation resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(2) *Report.* The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator, with all necessary supporting documentation, that explains how it has met the requirements set forth in paragraph (k)(1) of this section. This affirmative defense report shall be included in the first periodic compliance report, deviation report, or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance report, deviation report, or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second compliance report, deviation report, or excess emission report due after the initial occurrence of the violation of the relevant standard.

■ 4. Section 63.1311 is amended by:

■ a. Revising paragraphs (b) and (c);

■ b. Revising paragraphs (d) introductory text and (d)(6); and

■ c. Adding paragraph (d)(7).

The revisions and additions read as follows:

§ 63.1311 Compliance dates and relationship of this subpart to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart (except § 63.1331(a)(9)(iii)) upon initial start-up or by June 19, 2000, whichever is later, except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 (except § 63.1331(a)(9)(iii)) upon initial start-up or August 6, 2002, whichever is later. New affected sources that commenced construction or reconstruction after March 25, 1995, but on or before January 9, 2012, shall be in compliance with the pressure relief device monitoring requirements of § 63.1331(a)(9)(iii) no later than March 27, 2017. New affected sources that commenced construction or reconstruction after January 9, 2012, shall be in compliance with the pressure relief device monitoring requirements of § 63.1331(a)(9)(iii) upon initial startup or by March 27, 2014, whichever is later.

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.1331 for which compliance is covered by paragraph (d) of this section) no later than June 19, 2001, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section, except that the compliance date for the provisions contained in § 63.1329 is extended to March 27, 2014, for existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET using a continuous terephthalic acid high viscosity multiple end finisher process.

(d) Except as provided for in paragraphs (d)(1) through (7) of this section, existing affected sources shall be in compliance with § 63.1331 no later than June 19, 2001, unless an extension has been granted pursuant to paragraph (e) of this section.

* * * * *

(6) Notwithstanding paragraphs (d)(1) through (5) of this section, existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 (except § 63.1331(a)(9)(iii)) no later than August 6, 2002.

(7) Compliance with the pressure relief device monitoring provisions of § 63.1331(a)(9)(iii) shall occur no later than March 27, 2017.

* * * * *

■ 5. Section 63.1312 is amended by:

■ a. Adding, alphabetically, the term ''Pressure relief device or valve (§ 63.161)'' and removing the term ''Start-up, shutdown, and malfunction plan (§ 63.101)'' in paragraph (a); and

■ b. Adding the definition for ''Affirmative defense'' in alphabetical order in paragraph (b).

The revisions and additions read as follows:

§ 63.1312 Definitions.

* * * * *

(b) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

■ 6. Section 63.1315 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Adding paragraph (a)(19); and

■ c. Revising paragraph (b)(2).

The revisions and additions read as follows:

§ 63.1315 Continuous process vents provisions.

(a) For each continuous process vent located at an affected source, the owner or operator shall comply with the requirements of §§ 63.113 through 63.118, with the differences noted in paragraphs (a)(1) through (19) of this section for the purposes of this subpart,

except as provided in paragraphs (b) through (e) of this section.

* * * * *

(19) During periods of startup or shutdown, as an alternative to using the procedures specified in § 63.116, an owner or operator of an affected source or emission unit subject to an emission limit expressed as mass emissions per mass product may demonstrate compliance with the limit in accordance with paragraph (a)(19)(i), (ii), or (iii) of this section.

(i) Keep records establishing that the raw material introduced and product discharged rates were both zero.

(ii) Divide the organic HAP emission rate during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero according to § 63.1318(b)(1). Keep records of this calculation.

(iii) Keep records establishing that the operating parameters of the control device used to comply with the emission limit in § 63.113(a)(1) or (2) were maintained at the level established to meet the emission limit at maximum representative operating conditions.

(b) * * *

(2) Not allow organic HAP emissions from the collection of continuous process vents at the affected source to be greater than 0.000590 kg organic HAP/Mg of product. Compliance with this paragraph (b)(2) shall be determined using the procedures specified in § 63.1333(b). During periods of startup or shutdown, as an alternative to using the procedures specified in § 63.1333(b), an owner or operator of an affected source or emission unit subject to an emission limit expressed as mass emissions per mass product may demonstrate compliance with the limit in accordance with paragraph (b)(2)(i), (ii), or (iii) of this section.

(i) Keep records establishing that the raw material introduced and product discharged rates were both zero.

(ii) Divide the organic HAP emission rate during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero according to § 63.1333(b). Keep records of this calculation.

(iii) Keep records establishing that the operating parameters of the control device used to comply with the emission limit in paragraph (b)(2) of this section were maintained at the level established to meet the emission limit at maximum representative operating conditions.

* * * * *

■ 7. Section 63.1316 is amended by revising paragraphs (b)(1)(i)(A), (b)(1)(ii)(A), (b)(2)(i)(A), (b)(2)(ii)(A), and (c)(1)(i) to read as follows:

§ 63.1316 PET and polystyrene affected sources—emissions control provisions.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) Organic HAP emissions from all continuous process vents in each individual material recovery section shall, as a whole, be no greater than 0.018 kg organic HAP per Mg of product from the associated TPPU(s)); or alternatively, organic HAP emissions from all continuous process vents in the collection of material recovery sections within the affected source shall, as a whole, be no greater than 0.018 kg organic HAP per Mg product from all associated TPPU. During periods of startup or shutdown, as an alternative to using the procedures specified in § 63.1318(b)(1), an owner or operator of an affected source or emission unit subject to an emission limit expressed as mass emissions per mass product may demonstrate compliance with the limit in accordance with paragraphs (b)(1)(i)(A)(*1*), (*2*), or (*3*) of this section.

(*1*) Keep records establishing that the raw material introduced and product discharged rates were both zero.

(*2*) Divide the organic HAP emission rate during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero according to § 63.1318(b)(1). Keep records of this calculation.

(*3*) Keep records establishing that the operating parameters of the control device used to comply with the emission limit in paragraph (b)(1)(i)(A) of this section were maintained at the level established to meet the emission limit at maximum representative operating conditions.

* * * * *

(ii) * * *

(A) Organic HAP emissions from all continuous process vents in each individual polymerization reaction section (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of polymerization reaction sections within the affected source shall, as a whole, be no greater than 0.02 kg organic HAP per Mg product from all associated TPPU(s). During periods of startup or shutdown, as an alternative to using the procedures specified in § 63.1318(b)(1), an owner or operator of an affected source or emission unit subject to an emission limit expressed as mass emissions per mass product may demonstrate compliance with the limit in accordance with paragraphs (b)(1)(ii)(A)(*1*), (*2*), or (*3*) of this section.

(*1*) Keep records establishing that the raw material introduced and product discharged rates were both zero.

(*2*) Divide the organic HAP emission rate during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero according to § 63.1318(b)(1). Keep records of this calculation.

(*3*) Keep records establishing that the operating parameters of the control device used to comply with the emission limit in paragraph (b)(1)(ii)(A) of this section were maintained at the level established to meet the emission limit at maximum representative operating conditions.

* * * * *

(2) * * *

(i) * * *

(A) Organic HAP emissions from all continuous process vents associated with the esterification vessels in each individual raw materials preparation section shall, as a whole, be no greater than 0.04 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents associated with the esterification vessels in the collection of raw material preparation sections within the affected source shall, as a whole, be no greater than 0.04 kg organic HAP per Mg of product from all associated TPPU(s). Other continuous process vents (i.e., those not associated with the esterification vessels) in the collection of raw materials preparation sections within the affected source shall comply with § 63.1315. During periods of startup or shutdown, as an alternative to using the procedures specified in § 63.1318(b)(1), an owner or operator of an affected source or emission unit subject to an emission limit expressed as mass emissions per mass product may demonstrate compliance with the limit in accordance with paragraphs (b)(2)(i)(A)(*1*), (*2*), or (*3*) of this section.

(*1*) Keep records establishing that the raw material introduced and product discharged rates were both zero.

(*2*) Divide the organic HAP emission rate during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero according to § 63.1318(b)(1). Keep records of this calculation.

(*3*) Keep records establishing that the operating parameters of the control device used to comply with the emission limit in paragraph (b)(2)(i)(A) of this section were maintained at the level established to meet the emission limit at maximum representative operating conditions.

* * * * *

(ii) * * *

(A) Organic HAP emissions from all continuous process vents in each individual polymerization reaction section (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of polymerization reaction sections within the affected source shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from all associated TPPU(s). During periods of startup or shutdown, as an alternative to using the procedures specified in § 63.1318(b)(1), an owner or operator of an affected source or emission unit subject to an emission limit expressed as mass emissions per mass product may demonstrate compliance with the limit in accordance with paragraphs (b)(2)(ii)(A)(*1*), (*2*), or (*3*) of this section.

(*1*) Keep records establishing that the raw material introduced and product discharged rates were both zero.

(*2*) Divide the organic HAP emission rate during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero according to § 63.1318(b)(1). Keep records of this calculation.

(*3*) Keep records establishing that the operating parameters of the control device used to comply with the emission limit in paragraph (b)(2)(ii)(A) of this section were maintained at the level established to meet the emission limit at maximum representative operating conditions.

* * * * *

(c) * * *

(1) * * *

(i) Organic HAP emissions from all continuous process vents in each individual material recovery section shall, as a whole, be no greater than 0.0036 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of material recovery sections within the affected source shall, as a whole, be no greater than 0.0036 kg organic HAP per Mg of product from all associated TPPU(s). During periods of startup or shutdown, as an alternative to using the procedures specified in § 63.1318(b)(1), an owner or operator of an affected source or emission unit subject to an emission limit expressed as mass emissions per mass product may demonstrate compliance with the limit in accordance with paragraphs (c)(1)(i)(A), (B), or (C) of this section.

(A) Keep records establishing that the raw material introduced and product discharged rates were both zero.

(B) Divide the organic HAP emission rate during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero according to § 63.1318(b)(1). Keep records of this calculation.

(C) Keep records establishing that the operating parameters of the control device used to comply with the emission limit in paragraph (c)(1)(i) of this section were maintained at the level established to meet the emission limit at maximum representative operating conditions.

* * * * *

■ 8. Section 63.1318 is amended by:

■ a. Adding a sentence after the first sentence of paragraph (b)(1) introductory text and before Equation 1; and

■ b. Adding a sentence to the end of paragraph (c).

The additions read as follows:

§ 63.1318 PET and polystyrene affected sources—testing and compliance demonstration provisions.

* * * * *

(b) * * *

(1) * * * During periods of startup or shutdown, as an alternative to using Equation 1 of this subpart, the owner or operator may divide the emission rate of total organic HAP or TOC during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero to determine compliance with the emission limit. * * *

* * * * *

(c) *Compliance with mass emissions per mass product standards.* * * * During periods of startup or shutdown, as an alternative to using the procedures specified in paragraph (b)(1) of this section, the owner or operator may divide the emission rate of total organic HAP or TOC during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero to comply with the emission limit.

* * * * *

■ 9. Section 63.1319 is amended by revising the heading of paragraph (c) to read as follows:

§ 63.1319 PET and polystyrene affected sources—recordkeeping provisions.

* * * * *

(c) *Records demonstrating compliance with temperature limits for final condensers.* * * *

■ 10. Section 63.1324 is amended by revising the second sentence of paragraph (c)(4)(ii)(C) to read as follows:

§ 63.1324 Batch process vents—monitoring equipment.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(C) * * * The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than malfunctions. * * *

■ 11. Section 63.1329 is amended by revising the first sentence of paragraph (c) introductory text; and adding paragraphs (c)(2)(i) and (ii).

The revisions and additions read as follows:

§ 63.1329 Process contact cooling towers provisions.

* * * * *

(c) *Existing affected source requirements.* The owner or operator of an existing affected source subject to this section who manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process and who is subject or becomes subject to 40 CFR part 60, subpart DDD, shall maintain an ethylene glycol concentration in the process contact cooling tower at or below 6.0 percent by weight averaged on a daily basis over a rolling 14-day period of operating days. * * *

(2) * * *

(i) Where 40 CFR 60.564(j)(1) requires the use of ASTM D2908–74 or 91, ''Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography,'' ASTM D2908–91 (2011), D2908–91 (2005), D2908–91 (2001), D2908–91, or D2908–74 (all standards incorporated by reference, see § 63.14) may be used.

(ii) Where 40 CFR 60.564(j)(1)(i) requires the use of ASTM D3370–76 or 95a, ''Standard Practices for Sampling

Water from Closed Conduits,'' ASTM D3370–10, D3370–08, D3370–07, D3370–95a, or D3370–76 (all standards incorporated by reference, see § 63.14) may be used.

* * * * *

■ 12. Section 63.1331 is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Adding paragraph (a)(9); and
■ c. Revising paragraph (c).

The revisions and additions read as follows:

§ 63.1331 Equipment leak provisions.

(a) Except § 63.165 and as provided for in paragraphs (b) and (c) of this section, the owner or operator of each affected source shall comply with the requirements of subpart H of this part, with the differences noted in paragraphs (a)(1) through (13) of this section.

* * * * *

(9) *Requirements for pressure relief devices.* Except as specified in paragraph (a)(9)(iv) of this section, the owner or operator must comply with the operating and pressure release requirements specified in paragraphs (a)(9)(i) and (ii) of this section for pressure relief devices in organic HAP gas or vapor service. Except as specified in paragraph (a)(9)(iv) of this section, the owner or operator must also comply with the pressure release management requirements specified in paragraph (a)(9)(iii) of this section for all pressure relief devices in organic HAP service.

(i) *Operating requirements.* Except during a pressure release event, operate each pressure relief device in organic HAP gas or vapor service with an instrument reading of less than 500 ppm above background as detected by Method 21 of 40 CFR part 60, appendix A.

(ii) *Pressure release requirements.* For pressure relief devices in organic HAP gas or vapor service, comply with paragraph (a)(9)(ii)(A) or (B) of this section, as applicable.

(A) If the pressure relief device does not consist of or include a rupture disk, conduct instrument monitoring, as detected by Method 21 of 40 CFR part 60, appendix A, no later than 5 calendar days after the pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm above background, except as provided in § 63.171.

(B) If the pressure relief device consists of or includes a rupture disk, install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release, except as provided in § 63.171.

(iii) *Pressure release management.* Except as specified in paragraph (a)(9)(iv) of this section, pressure releases to the atmosphere from pressure relief devices in organic HAP service are prohibited, and the owner or operator must comply with the requirements specified in paragraphs (a)(9)(iii)(A) and (B) of this section for all pressure relief devices in organic HAP service.

(A) For each pressure relief device in organic HAP service, the owner or operator must equip each pressure relief device with a device(s) or use a monitoring system that is capable of:

(*1*) Identifying the pressure release;

(*2*) Recording the time and duration of each pressure release; and

(*3*) Notifying operators immediately that a pressure release is occurring. The device or monitoring system may be either specific to the pressure relief device itself or may be associated with the process system or piping, sufficient to indicate a pressure release to the atmosphere. Examples of these types of devices and systems include, but are not limited to, a rupture disk indicator, magnetic sensor, motion detector on the pressure relief valve stem, flow monitor, or pressure monitor.

(B) If any pressure relief device in organic HAP service releases to atmosphere as a result of a pressure release event, the owner or operator must calculate the quantity of organic HAP released during each pressure release event and report this quantity as required in § 63.1335(e)(6)(xiii). Calculations may be based on data from the pressure relief device monitoring alone or in combination with process parameter monitoring data and process knowledge.

(iv) *Pressure relief devices routed to a control device, process, or drain system.* If a pressure relief device in organic HAP service is designed and operated to route all pressure releases through a closed vent system to a control device, process, or drain system, the owner or operator is not required to comply with paragraphs (a)(9)(i), (ii), or (iii) (if applicable) of this section. Both the closed vent system and control device (if applicable) must meet the requirements of § 63.172. The drain system (if applicable) must meet the requirements of § 63.136.

* * * * *

(c)(1) Each affected source producing PET using a continuous TPA high viscosity multiple end finisher process shall monitor for leaks upon startup following an outage where changes have been made to equipment in gas/vapor or light liquid service. This leak check shall consist of the introduction of hot ethylene glycol vapors into the system for a period of no less than 2 hours during which time sensory monitoring of the equipment shall be conducted.

(2) A leak is determined to be detected if there is evidence of a potential leak found by visual, audible, or olfactory means.

(3) When a leak is detected, it shall be repaired as soon as practical, but not later than 15 days after it is detected, except as provided in § 63.171.

(i) The first attempt at repair shall be made no later than 5 days after each leak is detected.

(ii) Repaired shall mean that the visual, audible, olfactory or other indications of a leak have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

(4) When a leak is detected, the following information shall be recorded and kept for 2 years and reported in the next periodic report:

(i) The instrument and the equipment identification number and the operator name, initials or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

■ 13. Section 63.1332 is amended by revising paragraph (f) to read as follows:

§ 63.1332 Emissions averaging provisions.

* * * * *

(f) Debits and credits shall be calculated in accordance with the methods and procedures specified in paragraphs (g) and (h) of this section, respectively, and shall not include emissions during periods of monitoring excursions, as defined in § 63.1334(f). For these periods, the calculation of monthly credits and debits shall be adjusted as specified in paragraphs (f)(1) through (3) of this section.

(1) No credits would be assigned to the credit-generating emission point.

(2) Maximum debits would be assigned to the debit-generating emission point.

(3) The owner or operator may demonstrate to the Administrator that full or partial credits or debits should be assigned using the procedures in paragraph (l) of this section.

* * * * *

■ 14. Section 63.1333 is amended by:
■ a. Revising paragraphs (a) introductory text and (a)(1) introductory text; and
■ b. Adding a sentence after the third sentence of paragraph (b) introductory text and before Equation 49.

The revisions and additions read as follows:

§ 63.1333 Additional requirements for performance testing.

(a) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested and in accordance with § 63.7(a)(1), (a)(3), (d), (e)(2), (e)(4), (g), and (h), with the exceptions specified in paragraphs (a)(1) through (5) of this section and the additions specified in paragraphs (b) through (d) of this section. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator or an applicable subpart. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests. Sections 63.1314 through 63.1330 also contain specific testing requirements.

(1) Performance tests shall be conducted according to the provisions of § 63.7(e)(2), except that performance tests shall be conducted at maximum representative operating conditions achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) of this section to occur.

* * * * *

(b) * * * During periods of startup or shutdown, as an alternative to using Equation 49 of this subpart, the owner or operator may divide the emission rate of total organic HAP or TOC during startup or shutdown by the rate of polymer produced from the most recent performance test associated with a production rate greater than zero to comply with the emission limit. * * *

■ 15. Section 63.1334 is amended by:
■ a. Revising the last sentence of paragraph (f)(1) introductory text and paragraph (f)(1)(v);
■ b. Revising the last sentence of paragraph (f)(2) introductory text and paragraph (f)(2)(ii)(B);
■ c. Revising the last sentence of paragraph (f)(3) introductory text and the last sentence of paragraph (f)(3)(i) introductory text;
■ d. Revising the last sentence of paragraph (f)(4);
■ e. Revising paragraphs (f)(5) and (f)(6);
■ f. Revising the last sentence of paragraph (f)(7); and
■ g. Removing paragraph (g).

The revisions read as follows:

§ 63.1334 Parameter monitoring levels and excursions.

* * * * *

(f) * * *

(1) * * * For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart.

* * * * *

(v) The periods listed in paragraphs (f)(1)(v)(A) and (B) of this section are not considered to be part of the period of control or recovery device operation, for the purposes of paragraphs (f)(1)(ii) and (iii) of this section.

(A) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; or

(B) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(2) * * * For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart.

* * * * *

(ii) * * *

(B) Subtract the time during the periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments from the total amount of time determined in paragraph (f)(2)(ii)(A) of this section, to obtain the operating time used to determine if monitoring data are insufficient.

* * * * *

(3) * * * For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart.

(i) * * * For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart.

* * * * *

(4) * * * For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart.

(5) With respect to continuous process vents complying with the temperature limits for final condensers specified in § 63.1316(b)(1)(i)(B) or (c)(1)(ii), an excursion has occurred when the daily average exit temperature exceeds the appropriate condenser temperature limit. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart. The periods listed in paragraphs (f)(5)(i) and (ii) of this section are not considered to be part of the period of operation for the condenser for purposes of determining the daily average exit temperature.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; or

(ii) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(6) With respect to new affected sources producing SAN using a batch process, an excursion has occurred when the percent reduction calculated using the procedures specified in § 63.1333(c) is less than 84 percent. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart. The periods listed in paragraphs (f)(6)(i) and (ii) of this section are not considered to be part of the period of control or recovery device operation for purposes of determining the percent reduction.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; or

(ii) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(7) * * * For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart.

■ 16. Section 63.1335 is amended by:
■ a. Revising paragraph (b)(1);
■ b. Revising the first two sentences of paragraph (d) introductory text;
■ c. Revising the paragraph (d)(7);
■ d. Adding paragraph (d)(10);
■ e. Revising the first sentence of paragraph (e) introductory text;
■ f. Revising the first sentence of paragraph (e)(3) introductory text;
■ g. Adding a sentence to the end of paragraph (e)(3)(i);
■ h. Revising paragraph (e)(3)(v);
■ i. Removing and reserving paragraph (e)(3)(viii);
■ j. Revising paragraph (e)(3)(ix)(B);
■ k. Adding a sentence to the end of paragraph (e)(5) introductory text;
■ l. Adding paragraph (e)(5)(xii);
■ m. Revising the first two sentences of paragraph (e)(6) introductory text;
■ n. Revising the first sentence of paragraph (e)(6)(iii)(B);
■ o. Revising paragraphs (e)(6)(iii)(E), (e)(6)(xii)(A)(*1*), and (e)(6)(xii)(D);
■ p. Adding paragraphs (e)(6)(xiii) and (e)(9);

■ q. Revising the first sentence of paragraph (h)(1)(i);
■ r. Revising paragraph (h)(1)(ii);
■ s. Revising the first sentence of paragraph (h)(1)(iii); and
■ t. Revising paragraphs (h)(2)(iii) and (iv).

The revisions and additions read as follows:

§ 63.1335 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) *Malfunction recordkeeping and reporting.* (i) Records of malfunctions. The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (C) of this section.

(A) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time, and duration of each failure.

(B) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

(C) Record actions taken to minimize emissions in accordance with § 63.1310(j)(4), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(ii) *Reports of malfunctions.* If a source fails to meet an applicable standard, report such events in the Periodic Report. Report the number of failures to meet an applicable standard. For each instance, report the date, time, and duration of each failure. For each failure the report must include a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

* * * * *

(d) *Recordkeeping and documentation.* Owners or operators required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (10) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (g) of this section, and except as provided in paragraph (h) of this section. If a monitoring plan for storage vessels pursuant to § 63.1314(a)(9) requires continuous records, the monitoring plan shall specify which provisions, if any, of paragraphs (d)(1) through (10) of this section apply. * * *

(7) Monitoring data recorded during periods identified in paragraphs (d)(7)(i) and (ii) of this section shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device or recovery device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; or

(ii) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

* * * * *

(10) For pressure relief devices in organic HAP service, keep records of the information specified in paragraphs (d)(10)(i) through (v) of this section, as applicable.

(i) A list of identification numbers for pressure relief devices that the owner or operator elects to equip with a closed-vent system and control device, subject to the provisions in § 63.1331(a)(9)(iv).

(ii) A list of identification numbers for pressure relief devices subject to the provisions in § 63.1331(a)(9)(i).

(iii) A list of identification numbers for pressure relief devices equipped with rupture disks, subject to the provisions in § 63.1331(a)(9)(ii)(B).

(iv) The dates and results of the Method 21 of 40 CFR part 60, appendix A, monitoring following a pressure release for each pressure relief device subject to the provisions in § 63.1331(a)(9)(i) and (ii). The results shall include:

(A) The background level measured during each compliance test.

(B) The maximum instrument reading measured at each piece of equipment during each compliance test.

(v) For pressure relief devices in organic HAP service subject to § 63.1331(a)(9)(iii), keep records of each pressure release to the atmosphere, including the following information:

(A) The source, nature, and cause of the pressure release.

(B) The date, time, and duration of the pressure release.

(C) The quantity of total HAP emitted during the pressure release and the calculations used for determining this quantity.

(D) The actions taken to prevent this pressure release.

(E) The measures adopted to prevent future such pressure releases.

(e) *Reporting and notification.* In addition to the reports and notifications required by subpart A of this part as specified in Table 1 of this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (9) of this section, as applicable. * * *

(3) *Precompliance Report.* Owners or operators of affected sources requesting an extension for compliance; requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping or alternative controls; requesting approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.1323(b)(6)(i)(C); or wishing to establish parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d), shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. * * *

(i) *Submittal dates.* * * * To submit a Precompliance Report for the first time after the compliance date to request an extension for compliance; request approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping or alternative controls; request approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.1323(b)(6)(i)(C); or to request to establish parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d), the owner or operator shall notify the Administrator at least 90 days before the planned change is to be implemented; the change shall be considered approved if the Administrator either approves the change in writing, or fails to disapprove the change in writing within 45 days of receipt.

* * * * *

(v) The owner or operator shall report the intent to use alternative emission standards to comply with the provisions of this subpart in the Precompliance Report. The Administrator may deem alternative emission standards to be equivalent to the standard required by the subpart, under the procedures outlined in § 63.6(g).

* * * * *

(ix) * * *

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(3)(iii) of this section; to use alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(3)(iv) of this section; to use alternative controls, as specified in paragraph (e)(3)(v) of this section; to use engineering assessment to estimate emissions from a batch emissions episode, as specified in paragraph

(e)(3)(vi) of this section; or to establish parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d), as specified in paragraph (e)(3)(vii) of this section.

* * * * *

(5) *Notification of Compliance Status.* * * * For pressure relief devices subject to the requirements of § 63.1331(a)(9)(iii), the owner or operator shall submit the information listed in paragraph (e)(5)(xii) of this section in the Notification of Compliance Status within 150 days after the first applicable compliance date for pressure relief device monitoring.

* * * * *

(xii) For pressure relief devices in organic HAP service, a description of the device or monitoring system to be implemented, including the pressure relief devices and process parameters to be monitored (if applicable), a description of the alarms or other methods by which operators will be notified of a pressure release, and a description of how the owner or operator will determine the information to be recorded under paragraphs (d)(10)(v)(B) and (C) of this section (i.e., the duration of the pressure release and the methodology and calculations for determining of the quantity of total HAP emitted during the pressure release).

(6) *Periodic Reports.* For existing and new affected sources, the owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i) through (xiii) of this section. In addition, for equipment leaks subject to § 63.1331, with the exception of § 63.1331(c), the owner or operator shall submit the information specified in § 63.182(d) under the conditions listed in § 63.182(d), and for heat exchange systems subject to § 63.1328, the owner or operator shall submit the information specified in § 63.104(f)(2) as part of the Periodic Report required by this paragraph (e)(6). * * *

(iii) * * *

(B) The daily average values or batch cycle daily average values of monitored parameters for unexcused excursions, as defined in § 63.1334(f). * * *

(E) The information in paragraph (b)(1)(ii) of this section for reports of malfunctions.

* * * * *

(xii) * * *

(A) * * *

(*1*) A control or recovery device for a particular emission point or process section has one or more excursions, as defined in § 63.1334(f), in two consecutive semiannual reporting periods; or

* * * * *

(D) After quarterly reports have been submitted for an emission point for 1 year without one or more excursions occurring (during that year), the owner or operator may return to semiannual reporting for the emission point or process section.

(xiii) For pressure relief devices in organic HAP service, Periodic Reports must include the information specified in paragraphs (e)(6)(xiii)(A) through (C) of this section.

(A) For pressure relief devices in organic HAP service subject to § 63.1331(a)(9), report confirmation that all monitoring to show compliance was conducted within the reporting period.

(B) For pressure relief devices in organic HAP gas or vapor service subject to § 63.1331(a)(9)(ii), report any instrument reading of 500 ppm above background or greater, more than 5 calendar days after the pressure release.

(C) For pressure relief devices in organic HAP service subject to § 63.1331(a)(9)(iii), report each pressure release to the atmosphere, including the following information:

(*1*) The source, nature, and cause of the pressure release.

(*2*) The date, time, and duration of the pressure release.

(*3*) The quantity of total HAP emitted during the pressure release and the method used for determining this quantity.

(*4*) The actions taken to prevent this pressure release.

(*5*) The measures adopted to prevent future such pressure releases.

* * * * *

(9) *Electronic reporting.* Within 60 days after the date of completing each performance test (as defined in § 63.2), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, required by this subpart according to the methods specified in paragraphs (e)(9)(i) or (ii) of this section.

(i) For data collected using test methods supported by the EPA-provided software, the owner or operator shall submit the results of the performance test to the EPA by direct computer-to-computer electronic transfer via EPA-provided software, unless otherwise approved by the Administrator. Owners or operators, who claim that some of the information being submitted for performance tests is confidential business information (CBI), must submit a complete file using EPA-provided software that includes information claimed to be CBI on a compact disk, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA by direct computer-to-computer electronic transfer via EPA-provided software.

(ii) For any performance test conducted using test methods that are not compatible with the EPA-provided software, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 60.4.

* * * * *

(h) * * *

(1) * * *

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation (e.g., a temperature reading of −200 °C on a boiler), and will alert the operator by alarm or other means. * * *

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day, and the capability to observe this running average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (h)(1)(ii)(A) and (B) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits; and

(B) The running average is based on at least six 1-hour average values.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. * * *

(2) * * *

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i) through (iii) of this section, for the duration specified in this paragraph (h). For any calendar week, if compliance with paragraphs (h)(1)(i) through (iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation.

(iv) For purposes of paragraph (h) of this section, an excursion means that

the daily average (or batch cycle daily average) value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value.

■ 17. Table 1 to Subpart JJJ of Part 63 is amended by:

■ a. Removing entries § 63.1(a)(6)–(8) and § 63.1(a)(9);

■ b. Adding entries § 63.1(a)(6) and § 63.1(a)(7)–(9);

■ c. Revising entries § 63.1(c)(4), § 63.6(e), § 63.6(e)(1)(i), and § 63.6(e)(1)(ii);

■ d. Adding entry § 63.6(e)(3);

■ e. Removing entries § 63.6(e)(3)(i), § 63.6(e)(3)(i)(A), § 63.6(e)(3)(i)(B), § 63.6(e)(3)(i)(C), § 63.6(e)(3)(ii), § 63.6(e)(3)(iii), § 63.6(e)(3)(iv), § 63.6(e)(3)(v), § 63.6(e)(3)(vi), § 63.6(e)(3)(vii), § 63.6(e)(3)(vii)(A), § 63.6(e)(3)(vii)(B), § 63.6(e)(3)(vii)(C), § 63.6(e)(3)(viii), and § 63.6(e)(3)(ix);

■ f. Revising entries § 63.6(f)(1), § 63.7(e)(1), § 63.8(c)(1)(i), § 63.8(c)(1)(ii), and § 63.8(c)(1)(iii);

■ g. Adding entry § 63.10(d)(5);

■ h. Removing entries § 63.10(d)(5)(i) and § 63.10(d)(5)(ii); and

■ i. Removing footnote (a).

The revisions and additions read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to Subpart JJJ	Explanation
* * *	* * *	* * *
§ 63.1(a)(6)	Yes	
§ 63.1(a)(7)–(9)	No	[Reserved.].
* * *	* * *	* * *
§ 63.1(c)(4)	No	[Reserved.].
* * *	* * *	* * *
§ 63.6(e)	Yes	Except as otherwise specified for individual paragraphs.
§ 63.6(e)(1)(i)	No	See § 63.1310(j)(4) for general duty requirement.
§ 63.6(e)(1)(ii)	No	
* * *	* * *	* * *
§ 63.6(e)(3)	No	
§ 63.6(f)(1)	No	
* * *	* * *	* * *
§ 63.7(e)(1)	No	See § 63.1333(a).
* * *	* * *	* * *
§ 63.8(c)(1)(i)	No	
§ 63.8(c)(1)(ii)	No	
§ 63.8(c)(1)(iii)	No	
* * *	* * *	* * *
§ 63.10(d)(5)	No	See § 63.1335(b)(1)(ii) for malfunction reporting requirements.
* * *	* * *	* * *

Subpart MMM—[Amended]

■ 18. Section 63.1360 is amended by:

■ a. Revising paragraphs (e) heading, (e)(1) introductory text, (e)(3), and (e)(4); and

■ b. Adding paragraph (k).

The revisions and additions read as follows:

§ 63.1360 Applicability.

* * * * *

(e) *Applicability of this subpart.* (1) Each provision set forth in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

* * * * *

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the emissions limitations of this subpart during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment, if the shutdown would contravene emissions limitations of this subpart applicable to such items of equipment.

(4) *General duty.* At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

* * * * *

(k) *Affirmative defense for violation of emission standards during malfunction.* In response to an action to enforce the standards set forth in this subpart, the owner or operator may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at § 63.2. Appropriate penalties may be assessed if the owner or operator fails to meet their burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) *Assertion of affirmative defense.* To establish the affirmative defense in

any action to enforce such a standard, the owner or operator must timely meet the reporting requirements in paragraph (k)(2) of this section, and must prove by a preponderance of evidence that:

(i) The violation:

(A) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when a violation occurred; and

(iii) The frequency, amount, and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(iv) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment, and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the violation resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(2) *Report.* The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator, with all necessary supporting documentation, that explains how it has met the requirements set forth in paragraph (k)(1) of this section. This affirmative defense report shall be included in the first periodic compliance report, deviation report, or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

■ 19. Section 63.1361 is amended by:

■ a. Adding in alphabetical order the definition for ''Affirmative defense'';

■ b. In the definition of ''Group 1 process vent'' by removing the word ''hydogen'' and adding in its place the word ''hydrogen''; and

■ c. Revising the definition for ''Pesticide active ingredient or PAI''.

The revisions and additions read as follows:

§ 63.1361 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

Pesticide active ingredient or PAI means any material that is an active ingredient within the meaning of FIFRA section 2(a); that is used to produce an insecticide, herbicide, or fungicide end use pesticide product; that consists of one or more organic compounds; and that must be labeled in accordance with 40 CFR part 156 for transfer, sale, or distribution. These materials are typically described by North American Industrial Classification System (NAICS) Codes 325199 and 32532 (i.e., previously known as Standard Industrial Classification System Codes 2869 and 2879). These materials are identified by product classification codes 01, 21, 02, 04, 44, 07, 08, and 16 in block 19 on the 1999 version of EPA form 3540–16, the Pesticides Report for Pesticide-Producing Establishments. The materials represented by these codes are: insecticides; insecticide-fungicides; fungicides; herbicides; herbicide-fungicides; plant regulators; defoliants, desiccants; or multi-use active ingredients.

* * * * *

■ 20. Section 63.1362 is amended by revising paragraph (i) to read as follows:

§ 63.1362 Standards.

* * * * *

(i) *Opening of a safety device.* The owner or operator that opens a safety device, as defined in § 63.1361, is not exempt from applicable standards in order to avoid unsafe conditions. If opening a safety device results in the failure to meet any applicable standard, the owner or operator must still comply with the general duty to minimize emissions. If opening a safety device results in a deviation or excess emissions, such events must be reported as specified in § 63.1368(i). If the owner or operator attributes the event to a malfunction and intends to assert an affirmative defense, the owner or operator is subject to § 63.1360(k).

* * * * *

■ 21. Section 63.1363 is amended by:

■ a. Revising the first sentence of paragraph (b) introductory text;

■ b. Revising paragraph (b)(2);

■ c. Adding paragraph (b)(4);

■ d. Revising paragraphs (g)(2)(ii)(A), (g)(2)(iii)(A), and (g)(2)(iii)(B);

■ e. Revising the second sentence of paragraph (g)(4)(v)(A);

■ f. Revising paragraph (g)(6) introductory text;

■ g. Adding paragraph (g)(11);

■ h. Adding a sentence after the first sentence of paragraph (h)(2) introductory text;

■ i. Adding paragraph (h)(2)(iv);

■ j. Revising the first sentence of paragraph (h)(3)(i);

■ k. Revising paragraph (h)(3)(ii)(J); and

■ l. Adding paragraph (h)(3)(v).

The revisions and additions read as follows:

§ 63.1363 Standards for equipment leaks.

* * * * *

(b) *References.* The owner or operator shall comply with the provisions of subpart H of this part as specified in paragraphs (b)(1) through (3) of this section and with paragraph (b)(4) of this section for pressure relief devices. * * *

(2) The owner or operator shall comply with §§ 63.164, 63.166, 63.169, 63.177, and 63.179 of subpart H of this part in their entirety, except that when these sections reference other sections of subpart H of this part, the owner or operator shall comply with the revised sections as specified in paragraphs (b)(1), (3), and (4) of this section. Section 63.164 of subpart H of this part applies to compressors. Section 63.166 of subpart H of this part applies to sampling connection systems. Section 63.169 of subpart H of this part applies to: pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure

relief devices in liquid service. Section 63.177 of subpart H of this subpart applies to general alternative means of emission limitation. Section 63.179 of subpart H of this part applies to alternative means of emission limitation for enclosed-vented process units.

* * * * *

(4) *Requirements for pressure relief devices.* Except as specified in paragraph (b)(4)(iv) of this section, the owner or operator must comply with the operating and pressure release requirements specified in paragraphs (b)(4)(i) and (ii) of this section for pressure relief devices in organic HAP gas or vapor service. Except as specified in paragraph (b)(4)(iv) of this section, the owner or operator must also comply with the pressure release management requirements specified in paragraph (b)(4)(iii) of this section for all pressure relief devices in organic HAP service.

(i) *Operating requirements.* Except during a pressure release event, operate each pressure relief device in organic HAP gas or vapor service with an instrument reading of less than 500 ppm above background as detected by Method 21 of 40 CFR part 60, appendix A.

(ii) *Pressure release requirements.* For pressure relief devices in organic HAP gas or vapor service, comply with paragraphs (b)(4)(ii)(A) or (B) of this section, as applicable.

(A) If the pressure relief device does not consist of or include a rupture disk, conduct instrument monitoring, as detected by Method 21 of 40 CFR part 60, appendix A, no later than 5 calendar days after the pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm above background, except as provided in § 63.171.

(B) If the pressure relief device consists of or includes a rupture disk, install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release, except as provided in § 63.171.

(iii) *Pressure release management.* Except as specified in paragraph (b)(4)(iv) of this section, pressure releases to the atmosphere from pressure relief devices in organic HAP service are prohibited, and the owner or operator must comply with the requirements specified in paragraphs (b)(4)(iii)(A) and (B) of this section for all pressure relief devices in organic HAP service.

(A) For each pressure relief device in organic HAP service, the owner or operator must equip each pressure relief device with a device(s) or use a monitoring system that is capable of:

(*1*) Identifying the pressure release;

(*2*) Recording the time and duration of each pressure release; and

(*3*) Notifying operators immediately that a pressure release is occurring. The device or monitoring system may be either specific to the pressure relief device itself or may be associated with the process system or piping, sufficient to indicate a pressure release to the atmosphere. Examples of these types of devices and systems include, but are not limited to, a rupture disk indicator, magnetic sensor, motion detector on the pressure relief valve stem, flow monitor, or pressure monitor.

(B) If any pressure relief device in organic HAP service releases to atmosphere as a result of a pressure release event, the owner or operator must calculate the quantity of organic HAP released during each pressure release event and report this quantity as required in paragraph (h)(3)(v) of this section. Calculations may be based on data from the pressure relief device monitoring alone or in combination with process parameter monitoring data and process knowledge.

(iv) *Pressure relief devices routed to a control device, process, or drain system.* If a pressure relief device in organic HAP service is designed and operated to route all pressure releases through a closed vent system to a control device, process, or drain system, the owner or operator is not required to comply with paragraphs (b)(4)(i), (ii), or (iii) (if applicable) of this section. Both the closed vent system and control device (if applicable) must meet the requirements of § 63.172. The drain system (if applicable) must meet the requirements of § 63.136.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(A) A list of identification numbers for equipment that the owner or operator elects to equip with a closed-vent system and control device, subject to the provisions of paragraphs (b)(4)(iv) or (c)(7) of this section or § 63.164(h).

* * * * *

(iii) * * *

(A) A list of identification numbers for pressure relief devices subject to the provisions in paragraph (b)(4)(i) of this section.

(B) A list of identification numbers for pressure relief devices equipped with rupture disks, subject to the provisions of paragraph (b)(4)(ii)(B) of this section.

* * * * *

(4) * * *

(v) * * *

(A) * * * The written procedures must be maintained at the plant site. * * *

(6) *Records of compressor and pressure relief device compliance tests.* The dates and results of each compliance test required for compressors subject to the provisions in § 63.164(i) and the dates and results of the Method 21 of 40 CFR part 60, appendix A, monitoring following a pressure release for each pressure relief device subject to the provisions in paragraphs (b)(4)(i) and (ii) of this section. The results shall include:

* * * * *

(11) *Records of pressure releases to the atmosphere from pressure relief devices.* For pressure relief devices in organic HAP service subject to paragraph (b)(4)(iii) of this section, keep records of each pressure release to the atmosphere, including the following information:

(i) The source, nature, and cause of the pressure release.

(ii) The date, time, and duration of the pressure release.

(iii) The quantity of total HAP emitted during the pressure release and the calculations used for determining this quantity.

(iv) The actions taken to prevent this pressure release.

(v) The measures adopted to prevent future such pressure releases.

(h) * * *

(2) *Notification of compliance status report.* * * * For pressure relief devices subject to the requirements of paragraph (b)(4)(iii) of this section, the owner or operator shall submit the information listed in paragraph (h)(2)(iv) of this section in the Notification of Compliance Status within 150 days after the first applicable compliance date for pressure relief device monitoring. * * *

(iv) For pressure relief devices in organic HAP service, a description of the device or monitoring system to be implemented, including the pressure relief devices and process parameters to be monitored (if applicable), a description of the alarms or other methods by which operators will be notified of a pressure release, and a description of how the owner or operator will determine the information to be recorded under paragraphs (g)(11)(ii) and (iii) of this section (i.e., the duration of the pressure release and the methodology and calculations for determining of the quantity of total HAP emitted during the pressure release).

(3) * * *

(i) A report containing the information in paragraphs (h)(3)(ii) through (v) of this section shall be submitted semiannually. * * *

(ii) * * *

(J) The results of all monitoring to show compliance with §§ 63.164(i) and

63.172(f) conducted within the semiannual reporting period.

* * * * *

(v) For pressure relief devices in organic HAP service, Periodic Reports must include the information specified in paragraphs (h)(3)(v)(A) through (C) of this section.

(A) For pressure relief devices in organic HAP service subject to paragraph (b)(4) of this section, report confirmation that all monitoring to show compliance was conducted within the reporting period.

(B) For pressure relief devices in organic HAP gas or vapor service subject to paragraph (b)(4)(ii) of this section, report any instrument reading of 500 ppm above background or greater, more than 5 calendar days after the pressure release.

(C) For pressure relief devices in organic HAP service subject to paragraph (b)(4)(iii) of this section, report each pressure release to the atmosphere, including the following information:

(*1*) The source, nature, and cause of the pressure release.

(*2*) The date, time, and duration of the pressure release.

(*3*) The quantity of total HAP emitted during the pressure release and the method used for determining this quantity.

(*4*) The actions taken to prevent this pressure release.

(*5*) The measures adopted to prevent future such pressure releases.

■ 22. Section 63.1364 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 63.1364 Compliance dates.

(a) * * *

(1) An owner or operator of an existing affected source must comply with the provisions in this subpart (except § 63.1363(b)(4)(iii)) by December 23, 2003. Compliance with the pressure relief device monitoring provisions of § 63.1363(b)(4)(iii) shall occur no later than March 27, 2017.

* * * * *

(b) *Compliance dates for new and reconstructed sources.* An owner or operator of a new or reconstructed affected source must comply with the provisions of this subpart (except § 63.1363(b)(4)(iii)) on June 23, 1999 or upon startup, whichever is later. New or reconstructed affected sources that commenced construction after November 10, 1997, but on or before January 9, 2012, must be in compliance with the pressure relief device monitoring provisions of § 63.1363(b)(4)(iii) no later than March 27, 2017. New or reconstructed sources that commenced construction after January 9, 2012, must be in compliance with the pressure relief device monitoring provisions of § 63.1363(b)(4)(iii) upon initial startup or by March 27, 2014, whichever is later.

■ 23. Section 63.1365 is amended by:

■ a. Revising paragraph (b) introductory text; and

■ b. Removing and reserving paragraph (h)(3).

The revisions read as follows:

§ 63.1365 Test methods and initial compliance procedures.

* * * * *

(b) *Test methods and conditions.* When testing is conducted to measure emissions from an affected source, the test methods specified in paragraphs (b)(1) through (9) of this section shall be used. Compliance and performance tests shall be performed under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested and as specified in paragraphs (b)(10) and (11) of this section. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator or an applicable subpart. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 24. Section 63.1366 is amended by adding a sentence to the end of paragraph (b)(1)(ii) introductory text; and revising paragraph (b)(8).

The revisions and additions read as follows:

§ 63.1366 Monitoring and inspection requirements.

* * * * *

(b) * * *

(1) * * *

(ii) *Scrubbers.* * * * Alternatively, for halogen scrubbers, the owner or operator may comply with the requirements specified in § 63.994(c).

* * * * *

(8) *Violations.* Exceedances of parameters monitored according to the provisions of paragraphs (b)(1)(ii), (b)(1)(iv) through (ix), and (b)(5) of this section, or excursions as defined by paragraphs (b)(7)(i) and (ii) of this section, constitute violations of the operating limit according to paragraphs (b)(8)(i) and (ii) of this section. Exceedances of the temperature limit monitored according to the provisions of paragraph (b)(1)(iii) of this section or exceedances of the outlet concentrations monitored according to the provisions of paragraph (b)(1)(x) of this section constitute violations of the emission limit according to paragraphs (b)(8)(i) and (ii) of this section. Exceedances of the outlet concentrations monitored according to the provisions of paragraph (b)(5) of this section constitute violations of the emission limit according to the provisions of paragraph (b)(8)(iii) of this section.

(i) For episodes occurring more than once per day, exceedances of established parameter limits or excursions will result in no more than one violation per operating day for each monitored item of equipment utilized in the process.

(ii) For control devices used for more than one process in the course of an operating day, exceedances or excursions will result in no more than one violation per operating day, per control device, for each process for which the control device is in service.

(iii) Exceedances of the 20 or 50 ppmv TOC outlet emission limit, averaged over the operating day, will result in no more than one violation per day per control device. Exceedances of the 20 or 50 ppmv HCl and chlorine outlet emission limit, averaged over the operating day, will result in no more than one violation per day per control device.

* * * * *

■ 25. Section 63.1367 is amended by revising paragraphs (a)(3) and (e) to read as follows:

§ 63.1367 Recordkeeping requirements.

(a) * * *

(3) *Records of malfunctions.* (i) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time, and duration of each failure.

(ii) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

(iii) Record actions taken to minimize emissions in accordance with § 63.1360(e)(4), and any corrective

actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(e) The owner or operator of an affected source subject to the requirements for heat exchanger systems in § 63.1362(g) shall retain the records as specified in § 63.104(f)(1)(i) through (iv).

* * * * *

■ 26. Section 63.1368 is amended by:
■ a. Revising the seventh sentence of paragraph (e) introductory text;
■ b. Revising paragraph (i); and
■ c. Adding paragraph (p).

The revisions and additions read as follows:

§ 63.1368 Reporting requirements.

* * * * *

(e) *Precompliance plan.* * * * To change any of the information submitted in the Precompliance plan or to submit a Precompliance plan for the first time after the compliance date, the owner or operator shall notify the Administrator at least 90 days before the planned change is to be implemented; the change shall be considered approved if the Administrator either approves the change in writing, or fails to disapprove the change in writing within 90 days of receipt of the change. * * *

(i) *Reports of malfunctions.* If a source fails to meet an applicable standard, report such events in the Periodic Report. Report the number of failures to meet an applicable standard. For each instance, report the date, time, and duration of each failure. For each failure the report must include a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

* * * * *

(p) *Electronic reporting.* Within 60 days after the date of completing each performance test (as defined in § 63.2), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, required by this subpart according to the methods specified in paragraphs (p)(1) or (2) of this section.

(1) For data collected using test methods supported by the EPA-provided software, the owner or operator shall submit the results of the performance test to the EPA by direct computer-to-computer electronic transfer via EPA-provided software, unless otherwise approved by the Administrator. Owners or operators, who claim that some of the information being submitted for performance tests is confidential business information (CBI), must submit a complete file using EPA-provided software that includes information claimed to be CBI on a compact disk, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA by direct computer-to-computer electronic transfer via EPA-provided software.

(2) For any performance test conducted using test methods that are not compatible with the EPA-provided software, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 60.4.

■ 27. Table 1 to Subpart MMM of Part 63 is amended by:
■ a. Removing entry § 63.6(e);
■ b. Adding entries § 63.6(e)(1)(i), § 63.6(e)(1)(ii), § 63.6(e)(1)(iii), and § 63.6(e)(3);
■ c. Removing entry § 63.6(f);
■ d. Adding entries § 63.6(f)(1) and § 63.6(f)(2)–(3);
■ e. Revising entry § 63.7(e)(1);
■ f. Removing entry § 63.8(b)(3)–(c)(3);
■ g. Adding entries § 63.8(b)(3), § 63.8(c)(1)(i), § 63.8(c)(1)(ii), § 63.8(c)(1)(iii), and § 63.8(c)(2)–(3);
■ h. Revising entry § 63.8(d)–(f)(3);
■ i. Removing entry § 63.10(c);
■ j. Adding entries § 63.10(c)(1)–(14) and § 63.10(c)(15); and
■ k. Revising entry § 63.10(d)(5).

The revisions and additions read as follows:

TABLE 1 TO SUBPART MMM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM

Reference to subpart A	Applies to subpart MMM	Explanation
* *	* *	* * *
§ 63.6(e)(1)(i)	No	See § 63.1360(e)(4) for general duty requirement.
§ 63.6(e)(1)(ii)	No.	
§ 63.6(e)(1)(iii)	Yes.	
§ 63.6(e)(3)	No.	
§ 63.6(f)(1)	No.	
§ 63.6(f)(2)–(3)	Yes.	
* *	* *	* * *
§ 63.7(e)(1)	No	See § 63.1365(b).
* *	* *	* * *
§ 63.8(b)(3)	Yes.	
§ 63.8(c)(1)(i)	No.	
§ 63.8(c)(1)(ii)	Yes.	
§ 63.8(c)(1)(iii)	No.	
§ 63.8(c)(2)–(3)	Yes.	
* *	* *	* * *
§ 63.8(d)–(f)(3)	Yes	Except the last sentence of § 63.8(d)(3), which shall be replaced with ''The program of corrective action should be included in the plan required under § 63.8(d)(2).'' for the purposes of this subpart.
* *	* *	* * *
§ 63.10(c)(1)–(14)	Yes.	
§ 63.10(c)(15)	No.	

TABLE 1 TO SUBPART MMM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM—Continued

Reference to subpart A	Applies to subpart MMM	Explanation
* * *	* * *	* * *
§ 63.10(d)(5)	No	See § 63.1368(i) for malfunction reporting requirements.
* * *	* * *	* * *

Subpart PPP—[Amended]

■ 28. Section 63.1420 is amended by:
■ a. Revising paragraph (a)(4) introductory text;
■ b. Revising paragraphs (a)(4)(iv) and (c)(1);
■ c. Revising paragraph (d) introductory text;
■ d. Revising the heading for paragraph (e)(8);
■ e. Revising paragraph (h); and
■ f. Adding paragraph (i).

The revisions and additions read as follows:

§ 63.1420 Applicability and designation of affected sources.

(a) * * *

(4) The affected source also includes the emission points and components specified in paragraphs (a)(4)(i) through (vi) of this section that are associated with a PMPU (or a group of PMPUs) making up an affected source, as defined in § 63.1423.

* * * * *

(iv) Components required by or utilized as a method of compliance with this subpart, which may include control techniques and recovery devices.

* * * * *

(c) * * *

(1) Components and equipment that do not contain organic HAP or that contain organic HAP as impurities only and are located at a PMPU that is part of an affected source.

* * * * *

(d) *Processes excluded from the affected source.* The processes specified in paragraphs (d)(1) through (3) of this section are not part of the affected source and are not subject to the requirements of both this subpart and subpart A of this part.

* * * * *

(e) * * *

(8) *Requirements for flexible process units that are not PMPUs.* * * *

(h) *Applicability of this subpart.* (1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

(2) The emission limitations set forth in 40 CFR part 63, subpart H, as referred to in the equipment leak provisions in § 63.1434, shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which § 63.1434 applies.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment if the shutdown would contravene requirements applicable to such items of equipment.

(4) *General duty.* At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(i) *Affirmative defense for violation of emission standards during malfunction.* In response to an action to enforce the standards set forth in this subpart, the owner or operator may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at § 63.2. Appropriate penalties may be assessed if the owner or operator fails to meet their burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) *Assertion of affirmative defense.* To establish the affirmative defense in any action to enforce such a standard, the owner or operator must timely meet the reporting requirements in paragraph (i)(2) of this section, and must prove by a preponderance of evidence that:

(i) The violation:

(A) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when a violation occurred; and

(iii) The frequency, amount, and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(iv) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment, and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the violation resulting from the malfunction event at issue. The analysis

shall also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(2) *Report.* The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator, with all necessary supporting documentation, that explains how it has met the requirements set forth in paragraph (i)(1) of this section. This affirmative defense report shall be included in the first periodic compliance report, deviation report, or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

■ 29. Section 63.1422 is amended by:
■ a. Revising paragraph (b);
■ b. Revising paragraph (d) introductory text;
■ c. Revising the second sentence of paragraph (d)(2)(iv);
■ d. Adding paragraph (d)(6); and
■ e. Revising paragraph (e)(1).

The revisions and additions read as follows:

§ 63.1422 Compliance dates and relationship of this rule to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after September 4, 1997 shall be in compliance with this subpart (except § 63.1434(c)(3)) upon initial start-up or by June 1, 1999, whichever is later. New affected sources that commenced construction or reconstruction after September 4, 1997, but on or before January 9, 2012, shall be in compliance with the pressure relief device monitoring requirements of § 63.1434(c)(3) by March 27, 2017. New affected sources that commence construction or reconstruction after January 9, 2012, shall be in compliance with the pressure relief device monitoring requirements of § 63.1434(c)(3) upon initial startup or by March 27, 2014, whichever is later.

* * * * *

(d) Except as provided for in paragraphs (d)(1) through (6) of this section, existing affected sources shall be in compliance with § 63.1434 no later than December 1, 1999 unless an extension has been granted as specified in paragraph (e) of this section.

* * * * *

(2) * * *

(iv) * * * The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i)(A) and (B). * * *

(6) Compliance with the pressure relief device monitoring provisions of § 63.1434(c)(3) shall occur no later than March 27, 2017.

(e) * * *

(1) A request for an extension of compliance shall include the data described in § 63.6(i)(6)(i)(A) and (B).

* * * * *

■ 30. Section 63.1423 is amended by:
■ a. Removing the terms ''Relief valve (subpart G)'' and ''Start-up, shutdown, and malfunction plan (subpart F)'' and adding the terms ''Pressure release (subpart H)'' and ''Pressure relief device or valve (subpart H)'' in paragraph (a); and
■ b. Revising the definition for ''Process vent'' and adding the definition for ''Affirmative defense'' in alphabetical order to paragraph (b).

The revisions and additions read as follows:

§ 63.1423 Definitions.

* * * * *

(b) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

Process vent means a point of emission from a unit operation having a gaseous stream that is discharged to the atmosphere either directly or after passing through one or more combustion, recovery, or recapture devices. A process vent from a continuous unit operation is a gaseous emission stream containing more than 0.005 weight-percent total organic HAP. A process vent from a batch unit operation is a gaseous emission stream containing more than 225 kilograms per year (500 pounds per year) of organic HAP emissions. Unit operations that may have process vents are condensers, distillation units, reactors, or other unit operations within the PMPU. Process vents exclude pressure relief device discharges, gaseous streams routed to a fuel gas system(s), and leaks from equipment regulated under § 63.1434. A gaseous emission stream is no longer considered to be a process vent after the stream has been controlled and monitored in accordance with the applicable provisions of this subpart.

* * * * *

■ 31. Section 63.1427 is amended by:
■ a. Revising paragraph (j)(2) introductory text; and
■ b. Revising paragraph (k)(3)(ii).

The revisions read as follows:

§ 63.1427 Process vent requirements for processes using extended cookout as an epoxide emission reduction technique.

* * * * *

(j) * * *

(2) The owner or operator shall maintain the records specified in paragraphs (j)(2)(i) through (v) of this section.

* * * * *

(k) * * *

(3) * * *

(ii) Notification of each batch cycle when the time and duration of epoxide emissions before the end of the ECO, recorded in accordance with paragraph (j)(2)(v) of this section, exceed the time and duration of the emission episodes during the initial epoxide emission percentage reduction determination, as recorded in paragraph (j)(1)(viii) of this section.

* * * * *

■ 32. Section 63.1428 is amended by revising paragraph (h)(2)(ii) to read as follows:

§ 63.1428 Process vent requirements for group determination of PMPUs using a nonepoxide organic HAP to make or modify the product.

* * * * *

(h) * * *

(2) * * *

(ii) Where the recalculated TRE index value is less than or equal to 1.0, or, where the TRE index value before the process change was greater than 4.0 and the recalculated TRE index value is less than or equal to 4.0 but greater than 1.0, the owner or operator shall submit a report as specified in the process vent reporting and recordkeeping provisions in § 63.1430(i) or (j), and shall comply with the appropriate provisions in the process vent control requirements in § 63.1425 by the dates specified in § 63.1422 (the section describing compliance dates for sources subject to this subpart).

* * * * *

■ 33. Section 63.1429 is amended by:
■ a. Revising the last sentence of paragraph (c) introductory text; and
■ b. Revising the first two sentences of paragraph (d)(1).

The revisions read as follows:

§ 63.1429 Process vent monitoring requirements.

* * * * *

(c) *Monitoring of bypass lines.* * * * Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief devices needed for safety purposes are not subject to paragraphs (c)(1) or (2) of this section.

* * * * *

(d) * * *

(1) For each parameter monitored under paragraphs (a) or (b) of this section, the owner or operator shall establish a level, defined as either a maximum or minimum operating parameter as denoted in Table 7 of this subpart (the table listing the operating parameters for which monitoring levels are required to be established for process vent streams), that indicates that the combustion, recovery, or recapture device is operated in a manner to ensure compliance with the provisions of this subpart. The level shall be established in accordance with the procedures specified in § 63.1438(a) through (d), as applicable. * * *

■ 34. Section 63.1430 is amended by revising the last sentence of paragraph (d)(2)(i) to read as follows:

§ 63.1430 Process vent reporting and recordkeeping requirements.

* * * * *

(d) * * *

(2) * * *

(i) * * * In addition, monitoring data recorded during periods of non-operation of the process (or specific portion thereof) resulting in cessation of organic HAP emissions shall not be included in computing the daily averages.

* * * * *

■ 35. Section 63.1434 is amended by:

■ a. Revising paragraphs (a) and the last sentence of paragraph (d); and

■ b. Adding paragraph (c).

The revisions read as follows:

§ 63.1434 Equipment leak provisions.

(a) The owner or operator of each affected source shall comply with the HON equipment leak requirements in 40 CFR part 63, subpart H for all equipment in organic HAP service, except § 63.165 and as specified in paragraphs (b) through (h) of this section.

* * * * *

(c) *Requirements for pressure relief devices.* Except as specified in paragraph (c)(4) of this section, the owner or operator must comply with the operating and pressure release requirements specified in paragraphs (c)(1) and (2) of this section for pressure relief devices in organic HAP gas or vapor service. Except as specified in paragraph (c)(4) of this section, the owner or operator must also comply with the pressure release management requirements specified in paragraph (c)(3) of this section for all pressure relief devices in organic HAP service.

(1) *Operating requirements.* Except during a pressure release event, operate each pressure relief device in organic HAP gas or vapor service with an instrument reading of less than 500 ppm above background as detected by Method 21 of 40 CFR part 60, appendix A.

(2) *Pressure release requirements.* For pressure relief devices in organic HAP gas or vapor service, comply with paragraphs (c)(2)(i) or (ii) of this section, as applicable.

(i) If the pressure relief device does not consist of or include a rupture disk, conduct instrument monitoring, as detected by Method 21 of 40 CFR part 60, appendix A, no later than 5 calendar days after the pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm above background, except as provided in § 63.171.

(ii) If the pressure relief device consists of or includes a rupture disk, install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release, except as provided in § 63.171.

(3) *Pressure release management.* Except as specified in paragraph (c)(4) of this section, pressure releases to the atmosphere from pressure relief devices in organic HAP service are prohibited, and the owner or operator must comply with the requirements specified in paragraphs (c)(3)(i) and (ii) of this section for all pressure relief devices in organic HAP service.

(i) For each pressure relief device in organic HAP service, the owner or operator must equip each pressure relief device with a device(s) or use a monitoring system that is capable of:

(A) Identifying the pressure release;

(B) Recording the time and duration of each pressure release; and

(C) Notifying operators immediately that a pressure release is occurring. The device or monitoring system may be either specific to the pressure relief device itself or may be associated with the process system or piping, sufficient to indicate a pressure release to the atmosphere. Examples of these types of devices and systems include, but are not limited to, a rupture disk indicator, magnetic sensor, motion detector on the pressure relief valve stem, flow monitor, or pressure monitor.

(ii) If any pressure relief device in organic HAP service releases to atmosphere as a result of a pressure release event, the owner or operator must calculate the quantity of organic HAP released during each pressure release event and report this quantity as required in § 63.1439(e)(6)(ix). Calculations may be based on data from the pressure relief device monitoring alone or in combination with process parameter monitoring data and process knowledge.

(4) *Pressure relief devices routed to a control device, process, or drain system.* If a pressure relief device in organic HAP service is designed and operated to route all pressure releases through a closed vent system to a control device, process, or drain system, the owner or operator is not required to comply with paragraphs (c)(1), (2), or (3) (if applicable) of this section. Both the closed vent system and control device (if applicable) must meet the requirements of § 63.172. The drain system (if applicable) must meet the requirements of § 63.136.

(d) * * * The Initial Notification shall be submitted no later than June 1, 2000 for existing sources.

* * * * *

■ 36. Section 63.1437 is amended by revising paragraph (a) introductory text and the first sentence of paragraph (a)(1) introductory text.

The revisions read as follows:

§ 63.1437 Additional requirements for performance testing.

(a) Performance testing shall be conducted in accordance with § 63.7(a)(1), (a)(3), (d), (e)(2), (e)(4), (g), and (h), with the exceptions specified in paragraphs (a)(1) through (4) of this section and the additions specified in paragraph (b) of this section. Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator or an applicable subpart. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as

may be necessary to determine the conditions of performance tests.

(1) Performance tests shall be conducted according to the general provisions' performance testing requirements in § 63.7(e)(2), except that for all emission sources except process vents from batch unit operations, performance tests shall be conducted during maximum representative operating conditions for the process achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraphs (a)(1)(ii) or (iii) of this section to occur.

* * *

■ 37. Section 63.1438 is amended by:
■ a. Revising paragraphs (e)(1) introductory text and (e)(2);
■ b. Revising paragraphs (f)(1)(v), (f)(3)(ii)(B), and the last sentence of paragraph (f)(4); and
■ c. Removing paragraph (g).

The revisions read as follows:

§ 63.1438 Parameter monitoring levels and excursions.

* * * * *

(e) * * *

(1) Each excursion, as defined in paragraphs (f)(1)(i), (f)(2)(i)(A), (f)(2)(ii), (f)(3)(i), and (f)(4) of this section, constitutes a violation of the provisions of this subpart in accordance with paragraphs (e)(1)(i), (ii), or (iii) of this section.

* * * * *

(2) Each excursion, as defined in paragraphs (f)(1)(ii), (f)(1)(iii), (f)(2)(i)(B), and (f)(3)(ii) of this section constitutes a violation of the operating limit.

(f) * * *

(1) * * *

(v) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies, are not considered to be part of the period of combustion, recovery, or recapture device operation, for the purposes of paragraphs (f)(1)(ii) and (iii) of this section.

* * * * *

(3) * * *

(ii) * * *

(B) Subtract the time during the periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies, from the total amount of time determined above in paragraph (f)(3)(ii)(A) of this section, to obtain the operating time used to determine if monitoring data are insufficient.

* * * * *

(4) * * * For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, in accordance with paragraph (e) of this section.

* * * * *

■ 38. Section 63.1439 is amended by:
■ a. Revising paragraphs (b)(1) and (c);
■ b. Revising the first two sentences of paragraph (d) introductory text;
■ c. Revising paragraph (d)(7);
■ d. Adding paragraph (d)(10);
■ e. Revising the first sentence of paragraph (e) introductory text;
■ f. Revising the last sentence of paragraph (e)(3) introductory text;
■ g. Revising the first sentence of paragraph (e)(4) introductory text;
■ h. Adding a sentence to the end of paragraph (e)(4)(i);
■ i. Revising the last sentence of paragraph (e)(4)(ii);
■ j. Revising paragraph (e)(4)(v);
■ k. Removing and reserving paragraph (e)(4)(vi);
■ l. Revising paragraph (e)(4)(vii)(B);
■ m. Adding a sentence to the end of paragraph (e)(5) introductory text;
■ n. Adding a sentence to the end of paragraph (e)(5)(vii);
■ o. Adding paragraph (e)(5)(viii);
■ p. Revising the first sentence of paragraph (e)(6) introductory text;
■ q. Revising paragraphs (e)(6)(iii)(D)(*3*), (e)(6)(iii)(E), (e)(6)(viii)(A)(*1*), and (e)(6)(viii)(D);
■ r. Adding paragraphs (e)(6)(ix) and (e)(9);
■ s. Revising the first sentence of paragraph (h)(1)(i);
■ t. Revising paragraph (h)(1)(ii);
■ u. Revising the first sentence of paragraph (h)(1)(iii); and
■ v. Revising paragraphs (h)(2)(iii) and (h)(2)(iv).

The revisions and additions read as follows:

§ 63.1439 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) *Malfunction recordkeeping and reporting.* (i) *Records of malfunctions.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (C) of this section.

(A) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time, and duration of each failure.

(B) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

(C) Record actions taken to minimize emissions in accordance with § 63.1420(h)(4), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(ii) *Reports of malfunctions.* If a source fails to meet an applicable standard, report such events in the Periodic Report. Report the number of failures to meet an applicable standard. For each instance, report the date, time, and duration of each failure. For each failure the report must include a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

* * * * *

(c) *Subpart H requirements.* The owner or operator of an affected source shall comply with the HON equipment leak reporting and recordkeeping requirements in 40 CFR part 63, subpart H, except as specified in § 63.1434(b) through (h).

(d) *Recordkeeping and documentation.* The owner or operator required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (10) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (g) of this section, and except as provided in paragraph (h) of this section. If a monitoring plan for storage vessels pursuant to § 63.1432(i) requires continuous records, the monitoring plan shall specify which provisions, if any, of paragraphs (d)(1) through (10) of this section apply. * * *

(7) Monitoring data recorded during periods identified in paragraphs (d)(7)(i) and (ii) of this section shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or combustion, recovery, or recapture device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; or

(ii) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

* * * * *

(10) For pressure relief devices in organic HAP service, keep records of the information specified in paragraphs (d)(10)(i) through (v) of this section, as applicable.

(i) A list of identification numbers for pressure relief devices that the owner or

operator elects to equip with a closed-vent system and control device, subject to the provisions in § 63.1434(c)(4).

(ii) A list of identification numbers for pressure relief devices subject to the provisions in § 63.1434(c)(1).

(iii) A list of identification numbers for pressure relief devices equipped with rupture disks, subject to the provisions in § 63.1434(c)(2)(ii).

(iv) The dates and results of the Method 21 of 40 CFR part 60, appendix A, monitoring following a pressure release for each pressure relief device subject to the provisions in § 63.1434(c)(1) and (2). The results shall include:

(A) The background level measured during each compliance test.

(B) The maximum instrument reading measured at each piece of equipment during each compliance test.

(v) For pressure relief devices in organic HAP service subject to § 63.1434(c)(3), keep records of each pressure release to the atmosphere, including the following information:

(A) The source, nature, and cause of the pressure release.

(B) The date, time, and duration of the pressure release.

(C) The quantity of total HAP emitted during the pressure release and the calculations used for determining this quantity.

(D) The actions taken to prevent this pressure release.

(E) The measures adopted to prevent future such pressure releases.

(e) *Reporting and notification.* In addition to the reports and notifications required by 40 CFR part 63, subpart A, as specified in this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (9) of this section, as applicable. * * *

(3) * * * The General Provisions' Initial Notification requirements in § 63.9(b)(2) and (3) shall not apply for the purposes of this subpart.

* * * * *

(4) *Precompliance Report.* The owner or operator of an affected source requesting an extension for compliance; requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; or requesting approval to establish parameter monitoring levels according to the procedures contained in § 63.1438(c) or (d) shall submit a Precompliance Report according to the schedule described in paragraph (e)(4)(i) of this section. * * *

(i) * * * To submit a Precompliance Report for the first time after the compliance date to request an extension for compliance; request approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; or request approval to establish parameter monitoring levels according to the procedures contained in § 63.1438(c) or (d), the owner or operator shall notify the Administrator at least 90 days before the planned change is to be implemented; the change shall be considered approved if the Administrator either approves the change in writing, or fails to disapprove the change in writing within 45 days of receipt.

(ii) * * * The request for a compliance extension shall include the data outlined in the General Provisions' compliance requirements in § 63.6(i)(6)(i)(A) and (B), as required in § 63.1422(e)(1).

* * * * *

(v) The owner or operator shall report the intent to use an alternative emission standard to comply with the provisions of this subpart in the Precompliance Report. The Administrator may deem an alternative emission standard to be equivalent to the standard required by the subpart, under the procedures outlined in the General Provisions' requirements for use of an alternative nonopacity emission standard, in § 63.6(g).

* * * * *

(vii) * * *

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(4)(iii) of this section; to use alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(4)(iv) of this section; or to use alternative controls, as specified in paragraph (e)(4)(v) of this section.

* * * * *

(5) * * * For pressure relief devices subject to the requirements of § 63.1434(c)(3), the owner or operator shall submit the information listed in paragraph (e)(5)(viii) of this section in the Notification of Compliance Status within 150 days after the first applicable compliance date for pressure relief device monitoring.

* * * * *

(vii) * * * An owner or operator who transfers a Group 1 process vent for disposal pursuant to § 63.113(i) shall include in the Notification of Compliance Status the name and location of the transferee, and the identification of the Group 1 process vent.

(viii) For pressure relief devices in organic HAP service, a description of the device or monitoring system to be implemented, including the pressure relief devices and process parameters to be monitored (if applicable), a description of the alarms or other methods by which operators will be notified of a pressure release, and a description of how the owner or operator will determine the information to be recorded under paragraphs (d)(10)(v)(B) and (C) of this section (i.e., the duration of the pressure release and the methodology and calculations for determining of the quantity of total HAP emitted during the pressure release).

(6) *Periodic Reports.* For existing and new affected sources, the owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i) through (ix) of this section. * * *

(iii) * * *

(D) * * *

(*3*) For gas streams sent for disposal pursuant to § 63.113(i) or for process wastewater streams sent for treatment pursuant to § 63.132(g), reports of changes in the identity of the treatment facility or transferee.

(E) The information in paragraph (b)(1)(ii) of this section for reports of malfunctions.

* * * * *

(viii) * * *

(A) * * *

(*1*) A combustion, recovery, or recapture device for a particular emission point or process section has one or more excursions, as defined in § 63.1438(f), in two consecutive semiannual reporting periods; or

* * * * *

(D) After quarterly reports have been submitted for an emission point for 1 year without one or more excursions occurring (during that year), the owner or operator may return to semiannual reporting for the emission point or process section.

(ix) For pressure relief devices in organic HAP service, Periodic Reports must include the information specified in paragraphs (e)(6)(ix)(A) through (C) of this section.

(A) For pressure relief devices in organic HAP service subject to § 63.1434(c), report confirmation that all monitoring to show compliance was conducted within the reporting period.

(B) For pressure relief devices in organic HAP gas or vapor service subject to § 63.1434(c)(2), report any instrument reading of 500 ppm above background or greater, more than 5 calendar days after the pressure release.

(C) For pressure relief devices in organic HAP service subject to

§ 63.1434(c)(3), report each pressure release to the atmosphere, including the following information:

(*1*) The source, nature, and cause of the pressure release.

(*2*) The date, time, and duration of the pressure release.

(*3*) The quantity of total HAP emitted during the pressure release and the method used for determining this quantity.

(*4*) The actions taken to prevent this pressure release.

(*5*) The measures adopted to prevent future such pressure releases.

* * * * *

(9) *Electronic reporting.* Within 60 days after the date of completing each performance test (as defined in § 63.2), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, required by this subpart according to the methods specified in paragraphs (e)(9)(i) or (ii) of this section.

(i) For data collected using test methods supported by the EPA-provided software, the owner or operator shall submit the results of the performance test to the EPA by direct computer-to-computer electronic transfer via EPA-provided software, unless otherwise approved by the Administrator. Owners or operators, who claim that some of the information being submitted for performance tests is confidential business information (CBI), must submit a complete file using EPA-provided software that includes information claimed to be CBI on a compact disk, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA by direct computer-to-computer electronic transfer via EPA-provided software.

(ii) For any performance test conducted using test methods that are not compatible with the EPA-provided software, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 60.4.

* * * * *

(h) * * *

(1) * * *

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation (e.g., a temperature reading of −200 °C on a boiler), and will alert the operator by alarm or other means. * * *

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day, and the capability to observe this running average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (h)(1)(ii)(A) and (B) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits; and

(B) The running average is based on at least six 1-hour average values.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation, except in circumstances where the presence of unchanging data are the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. * * *

(2) * * *

(iii) The owner or operator shall retain the records specified in paragraph (h)(1) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation.

(iv) For the purposes of paragraph (h) of this section, an excursion means that the daily average of monitoring data for a parameter is greater than the maximum, or less than the minimum established value.

■ 39. Table 1 to Subpart PPP of Part 63 is amended by:

■ a. Removing entries 63.1(a)(6)-(8) and 63.1(a)(9);

■ b. Adding entries 63.1(a)(6) and 63.1(a)(7)–(9);

■ c. Revising entries 63.1(c)(4), 63.6(e), 63.6(e)(1)(i), and 63.6(e)(1)(ii);

■ d. Adding entry 63.6(e)(3);

■ e. Removing entries 63.6(e)(3)(i), 63.6(e)(3)(i)(A), 63.6(e)(3)(i)(B), 63.6(e)(3)(i)(C), 63.6(e)(3)(ii), 63.6(e)(3)(iii), 63.6(e)(3)(iv), 63.6(e)(3)(v), 63.6(e)(3)(vi), 63.6(e)(3)(vii), 63.6(e)(3)(vii)(A), 63.6(e)(3)(vii)(B), 63.6(e)(3)(vii)(C), 63.6(e)(3)(viii), and 63.6(e)(3)(ix);

■ f. Revising entries 63.6(f)(1), 63.7(e)(1), 63.8(c)(1)(i), 63.8(c)(1)(ii), and 63.8(c)(1)(iii);

■ g. Adding entry 63.10(d)(5);

■ h. Removing entries 63.10(d)(5)(i) and 63.10(d)(5)(ii); and

■ i. Removing footnote (a).

The revisions and additions read as follows:

TABLE 1 OF SUBPART PPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES

Reference	Applies to subpart PPP	Explanation
* * *	* * *	* * *
63.1(a)(6)	Yes.	
63.1(a)(7)–(9)	No	Reserved.
* * *	* * *	* * *
63.1(c)(4)	No	Reserved.
* * *	* * *	* * *
63.6(e)	Yes	Except as otherwise specified for individual paragraphs.
§ 63.6(e)(1)(i)	No	See § 63.1420(h)(4) for general duty requirement.
§ 63.6(e)(1)(ii)	No.	
* * *	* * *	* * *
§ 63.6(e)(3)	No.	
§ 63.6(f)(1)	No.	

TABLE 1 OF SUBPART PPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

Reference	Applies to subpart PPP	Explanation
* *	* *	* * *
§ 63.7(e)(1)	No	See § 63.1437(a).
* *	* *	* * *
§ 63.8(c)(1)(i)	No.	
§ 63.8(c)(1)(ii)	No.	
§ 63.8(c)(1)(iii)	No.	
* *	* *	* * *
§ 63.10(d)(5)	No	See § 63.1439(b)(1)(ii) for malfunction reporting requirements.
* *	* *	* * *

■ 40. Table 2 to Subpart PPP of part 63 is amended by:

■ a. Revising the title;

■ b. Adding entries 63.107 and 63.153; and

■ c. Revising entry 63.160–63.182.

The revisions and additions read as follows:

TABLE 2 OF SUBPART PPP OF PART 63—APPLICABILITY OF HON PROVISIONS TO SUBPART PPP AFFECTED SOURCES

Reference	Applies to subpart PPP	Explanation	Applicable section of subpart PPP
Subpart F:			
* *	*	* * *	*
63.107	No		
* *	*	* * *	*
Subpart G:			
* *	*	* * *	*
63.153	No		63.1421
Subpart H:			
63.160–63.182	Yes	Subpart PPP affected sources shall comply with all requirements of subpart H, with the differences noted in 63.1422(d), 63.1422(h), and 63.1434.	63.1434
* *	*	* * *	*

■ 41. Table 7 to Subpart PPP of part 63 is amended by revising the title to read as follows:

Table 7 of Subpart PPP of Part 63—Operating Parameters for Which Monitoring Levels Are Required To Be Established for Process Vent Streams

* * * * *

[FR Doc. 2014–04305 Filed 3–26–14; 8:45 am]

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FEDERAL REGISTER

Vol. 79 Thursday,

No. 59 March 27, 2014

Part IV

The President

Proclamation 9091—Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2014

Federal Register
Vol. 79, No. 59
Thursday, March 27, 2014

Presidential Documents

Title 3—

The President

Proclamation 9091 of March 24, 2014

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2014

By the President of the United States of America

A Proclamation

Almost two centuries ago, the people of Greece laid claim to their independence and began a long struggle to restore democracy to its birthplace. Greek Americans crossed oceans to fight for the freedom of their ancestral homeland, and through two World Wars and a Cold War, Greece and the United States stood side-by-side. On Greek Independence Day, we honor the deep connections between our two nations and celebrate the democratic ideals at the heart of our shared history.

America's form of government owes much to the small group of Greek city-states that pioneered democracy thousands of years ago. Just as Hellenic principles guided our Founders, Greek antiquity has inspired generations, from writers and activists to architects and inventors. Greek Americans have contributed as leaders of culture, community, business, and government. Through the generations, they have helped shape our enduring democracy—a Nation that accepts our obligations to one another and understands that we must rise and fall as one.

Greece is a valued NATO ally, and our friendship remains as strong as ever. As Greece takes tough action to rebuild its economy and bring relief to the Greek people, the United States offers our continued support. Today, let us reaffirm a bond that extends beyond government, connects our peoples, and inspires all who strive to choose their own destiny.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 25, 2014, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

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Filed 3–26–14; 11:15 am]
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